



**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

**ORDER
5500.1B**

Effective Date:
MM/DD/YY

SUBJ: Passenger Facility Charge (PFC) – 7/15/2016 DRAFT

1. Purpose.

This Order provides instructions and sets forth policy and procedures used in the administration of Passenger Facility Charge (PFC) Program. The PFC Program allows the collection of fees up to \$4.50 for every enplaned passenger at commercial airports controlled by public agencies.

The primary audience for this order is all FAA employees and managers with Passenger Facility Charge (PFC) responsibilities. The secondary audience includes Public Agencies and Air Carriers involved with collecting and reporting PFCs.

2. Distribution.

This Order is located on the FAA Office of Airports website where it is available to all interested parties.

3. Cancellation.

This Order cancels the following:

FAA Order 5500.1, Passenger Facility Charge (dated August 9, 2001).

4. Explanation of Changes.

This Order replaces the above referenced 2001 PFC Order with updated information that reflects current legislation and policy. The Office of Airports reorganized and revised this Order to incorporate the Plain Language Act of 2010; to differentiate what is required by law and policy; and to incorporate PFC Updates 35-02 (dated October 5, 2001) through 69-12 (dated September 14, 2012).

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Chapter 1. Introduction

Section 1.1 Overview

- 1.1.1 **General.** This Order provides instructions to Federal Aviation Administration (FAA) Airports offices in administering the Passenger Facility Charge (PFC) program.
- 1.1.2 **Authorizing Legislation.** The PFC is authorized by 49 United States Code (U.S.C.) § 40117, which is referred to as the ‘Statute.’ The PFC program allows public agencies controlling commercial service airports to collect and use revenue to finance eligible projects through the imposition of a \$1, \$2, \$3, \$4, or \$4.50 charge per enplaned passenger.
- 1.1.3 **Policy Principles.**
- 1.1.3.1 Terms and conditions of this Order. The authority granted to a public agency to impose a PFC is subject to terms and conditions established by the FAA.
 - 1.1.3.2 This Order reflects the FAA’s implementation of the statutory and regulatory provisions based on its experience in administering the PFC program.
 - 1.1.3.3 The statute is implemented by the PFC Regulation, 14 Code of Federal Regulations (CFR) Part 158, ‘Passenger Facility Charges,’ which was adopted on May 22, 1991, and substantially amended on May 30, 2000;¹ March 18, 2004;² March 23, 2005;³ and May 23, 2007.⁴ The regulation provides public agencies with the flexibility to tailor their PFC programs to their needs and reduce the administrative burden, while meeting the requirements of the statute.
 - 1.1.3.4 The PFC program must be administered uniformly. However, the variation among the FAA Regions in program and public agency⁵ needs, available resources, and Airports Division organizational structures requires that FAA Regions have some flexibility in the administration of program elements not specifically required by the regulation. This Order notes where FAA Regions may use discretion in the administration of the program and where FAA Regions must follow specific requirements outlined by the PFC statute and regulation.

¹ FAA, “Passenger Facility Charges. Final Rule,” *Federal Register*, 65(104): 34536-34543, May 30, 2000.

² FAA, “Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers,” *Federal Register*, 69(53): 12940-12948, March 18, 2004.

³ FAA, “Passenger Facility Charge Program, Non-Hub Pilot Program and Related Changes,” *Federal Register*, 70(55): 14928-14938, March 23, 2005.

⁴ FAA, “Passenger Facility Charge Program, Debt Service, Air Carrier Bankruptcy, and Miscellaneous Changes,” *Federal Register*, 72(99): 28837-28850, May 23, 2007.

⁵ A public agency, defined in detail later in Appendix A, is an entity that controls a commercial service airport.

- 1.1.4 **Definitions.** In many cases, the definitions here have been clarified beyond what is shown in the PFC regulation to provide clarity references to the regulatory definitions are included below.

Adequate project progress means that the FAA expects that a public agency will make continual progress on an approved project from project implementation until project completion. The FAA expects that public agencies will physically complete most approved projects within one to four years of project implementation.

43c refers to the authority that allows the public agency to change the duration of collection as provided in §158.43(c).

Administrator means the Administrator of the Federal Aviation Administration or other person designated by the Administrator.

Air carrier means any person (i.e., entity) providing passenger air transportation for hire that is incorporated under the laws of the United States.

Air transportation means the transportation of passengers by aircraft in common carriage, for which the air carrier receives remuneration (i.e., payment), between a point in the United States and a point outside the United States, between a point in a State and another State, and between points entirely within the same State.

Air travel ticket includes all documents, electronic records, boarding passes, and any other ticketing medium about a passenger's itinerary necessary to transport a passenger by air, including passenger manifests (14 CFR § 158.3).

Airport means any area of land or water, including any heliport that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon (49 U.S.C. § 47102(2)).

Airport capital plan is a term used in the PFC Regulation, at 14 CFR §158.3, referring to what is commonly known as an airport's Capital Improvement Program (CIP). The CIP lists airport-related planning, development, or noise compatibility projects within specified timeframes, such as one to five years, six to ten years and eleven to twenty years in the future. The airport capital plan or CIP should include any and all potential projects, regardless of whether the public agency anticipates requesting AIP or PFC funds or using airport revenue or other local funds, bond proceeds, or funds from other Federal or state agencies.

Airport Improvement Program (AIP) provides grants to eligible airports for the planning and development of public-use airports that are included in the National Plan of Integrated Airport Systems (NPIAS).

Airport layout plan (ALP) is a plan showing the existing and proposed airport facilities and boundaries in a form prescribed by the Administrator (14 CFR § 158.3).

Airport revenue, as defined in 14 CFR §158.3, means revenue generated by an airport:

1. Through any lease, rent, fee, or other charge collected, directly or indirectly, in connection with any aeronautical activity conducted on an airport that it controls, or
2. In connection with any activity conducted on federally-obligated airport land.

Allowable cost means the reasonable and necessary costs of carrying out an approved project, including costs incurred before and after the approval to impose a PFC, and making payments for debt service on bonds and other indebtedness incurred to carry out such projects. Allowable costs include only those costs incurred on projects implemented on or after November 5, 1990 (the date the statute was enacted). Costs for terminal development incurred after August 1, 1986, at an airport that did not have more than 0.25 percent of the total annual passenger boardings in the United States in the most recent calendar year for which data are available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997 are allowable (14 CFR § 158.3).

Approved project means a project for which the FAA has approved using PFC revenue under this part. This includes projects acknowledged by the FAA under 14 CFR § 158.30 (streamlined application procedures for non-hub airports) of this part.

Bond financing costs means the costs of financing a bond (or other debt instrument except debt service) and includes such costs as those associated with insurance, underwriting discount, original issue discount, capitalized interest, debt service reserve funds, initial credit enhancement costs, and initial trustee and paying agent fees (14 CFR § 158.3).

Capital improvement plan (CIP) is synonymous with “airport capital plan” for the purpose of this Order.

Change of scope means (1) a qualitative or quantitative change to a project previously approved in either a Final Agency Decision or Letter of Acknowledgement, (2) a change in the method of PFC financing to be used for a project, or (3) a material change in how the public agency will use PFC revenue to pay for a project.

Charge effective date means the first date on which carriers are required to collect a PFC (14 CFR § 158.3).

Charge expiration date means the date on which carriers are to stop collecting a PFC (14 CFR § 158.3).

Class of carrier means a category of air carriers, based on common carrier classifications in FAA operational regulations, DOT economic regulations, or on any other basis that is reasonable, not arbitrary, nondiscriminatory and otherwise in compliance with the law. A class of carriers may be used by a public agency to exempt those carriers from the requirement to collect PFCs.

Collecting carrier means an issuing carrier or other carrier collecting a PFC, whether or not such carrier issues the air travel ticket (14 CFR § 158.3).

Collection means the requirement by an air carrier that eligible passengers must pay one or more PFCs based on the airports in the passenger's itinerary (14 CFR § 158.3).

Commercial service airport means a public airport that annually enplanes 2,500 or more passengers and receives scheduled passenger service by aircraft (14 CFR § 158.3).

Covered air carrier means an air carrier that files for bankruptcy protection, or has an involuntary bankruptcy proceeding started against it, after December 12, 2003. An air carrier that is currently in compliance with PFC remittance requirements and that has an involuntary bankruptcy proceeding started against it has 90 days from the date the proceeding was filed to obtain dismissal of the involuntary petition before becoming a covered air carrier. An air carrier ceases to be a covered air carrier when it emerges from bankruptcy protection (14 CFR § 158.3).

Covered airport means a medium or large hub airport at which one or two air carriers control more than 50 percent of passenger boardings (14 CFR § 158.3).

Debt service means payments for principal and interest, sinking funds, call premiums, periodic credit enhancement fees, trustee and paying agent fees, coverage, and remarketing fees (14 CFR § 158.3).

Decision date means the issuance date of the FAA's decision, whether it is a Final Agency Decision or a Letter of Acknowledgement.

Disbursement means the public agency's use of PFC revenue to pay (or reimburse itself) for allowable costs of approved projects.

Eligible point means a point receiving air transportation under the Essential Air Service program.

Excess revenue means PFC revenue collected, plus interest, that exceeds the allowable costs of a project. If PFC revenue is used to acquire property which is subsequently sold at greater value, then the proceeds are also considered 'excess revenue' to the extent they exceed the original cost.

Excluded class of carriers means those air carriers not required to collect PFCs from passengers enplaning at a specific airport. The FAA may agree to exclude a class if the number of passengers enplaned by the carriers in the class constitutes no more than one percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed (14 CFR § 158.11).

Exclusive long term lease or use agreement means an exclusive lease or use agreement between a public agency and an air carrier or foreign air carrier with a term of five years or more. (14 CFR § 158.3) This term also applies to exclusive leases of less than five

years that have automatic renewal or carryover options, or to leases that have the effect of granting exclusive use rights.

FAA Airports office means a regional, district, or field office of the FAA that administers Federal airport-related matters (14 CFR § 158.3).

Final Agency Decision means the decision document issued by the FAA to approve or disapprove, in whole or in part, a public agency's application to impose or use PFC revenue.

Financial need means that a public agency cannot meet its operational or debt service obligations and does not have at least a two-month capital reserve fund (14 CFR § 158.3).

Financial plan is the public agency's plan to finance the proposed projects in its PFC application.

Financing costs means the costs of financing a bond or other debt instrument.

Foreign air carrier means any provider of passenger air transportation for hire that is incorporated under the laws of a country other than the United States.

Frequent flyer award coupon means a zero-fare award of air transportation that an air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program, whether or not the term 'frequent flier' is used in the definition of that program. The definition does not extend to the redemption of accumulated credits for awards of additional or upgraded service on trips for which the passenger has paid a published fare, 'two-for-the-price-of-one' and similar marketing programs, or to air transportation purchased for a passenger by other parties (14 CFR § 158.3).

Gateway means the last enplaning airport before departure from the United States.

Ground support equipment means service and maintenance equipment used at an airport to support aeronautical operations and related activities. Baggage tugs, belt loaders, cargo loaders, forklifts, fuel trucks, lavatory trucks, and pushback tractors are among the types of vehicles that fit this definition. In the case of equipment eligible for PFC funding under VALE, this equipment must be airport owned (14 CFR § 158.3).

Implementation of an approved project means: 1) issuance to a contractor of notice to proceed or the start of physical construction (in the case of a construction project); 2) commencement of work by a contractor or public agency to carry out the statement of work (in the case of a non-construction project); or 3) commencement of a title search or the execution of a purchase contract or agreement for a parcel (in the case of a property acquisition project) (14 CFR § 158.3).

Issuing carrier means any air carrier or foreign air carrier that issues an air travel ticket or whose imprinted ticket stock or equivalent ticketing method is used in issuing such ticket by an agent (14 CFR § 158.3).

Letter of Acknowledgement means the decision document issued by the FAA acknowledging or partially acknowledging a public agency's Notice of Intent (NOI) to impose or use PFC revenue.

Letter of Objection means the decision document issued by the FAA objecting to a public agency's Notice of Intent (NOI) to impose or use PFC revenue in its entirety.

Medium or large hub airport means a commercial service airport that has at least 0.25 percent of the total number of passenger boardings at all such airports in the United States for the prior calendar year, as determined by the Administrator (14 CFR § 158.3).

Minimum necessary means the basic acquisition or construction needed for a facility to meet FAA standards or Part 1542 security requirements.

Non-hub airport means a commercial service airport that has less than 0.05 percent of the passenger boardings (49 U.S.C. § 47102(14)) in the U.S. for the prior calendar year.

Nonrevenue passenger means a passenger receiving air transportation from an air carrier or foreign air carrier for which no remuneration is received and as defined under DOT regulations or as otherwise determined by the Administrator. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are also considered nonrevenue passengers.

Notice of intent (NOI) to impose or use PFC revenue means a notice under 14 CFR § 158.30 (PFC authorization at non-hub Airports) from a public agency controlling a non-hub airport that it intends to impose a PFC and/or use PFC revenue. Except for 14 CFR § 158.25 through 30, "notice of intent" can be used interchangeably with "application" (14 CFR § 158.3).

One-way trip means any trip that is not a round trip (14 CFR § 158.3).

Passenger enplaned means a domestic, territorial, or international revenue passenger enplaned at a point in the United States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign commerce (14 CFR § 158.3) (passengers are not considered enplaned at technical stops, such as those for refueling or customs inspection, which are not shown on the passenger's ticket).

PFC means a passenger facility charge imposed by a public agency on passengers enplaned at a commercial service airport it controls (14 CFR § 158.3).

PFC administrative support costs means the reasonable and necessary costs of preparing a PFC application or amendment, issuing and maintaining the required PFC records, and performing the required audit of the public agency's PFC account. These costs may include reasonable monthly financial account charges and transaction fees (14 CFR § 158.3).

Pay-as-you-go financing means project financing using available revenue rather than a debt instrument to pay project costs.

Point means the airport where travel begins or ends. If a locality is served by more than one airport co-terminal airports, the correct point can be determined by consulting the current version of the *Official Airline Guide*.⁶ While the itinerary shown on the ticket is the authoritative source for the collection of a PFC, it is important to note that for defining a round-trip as it pertains to calculating PFCs, a trip can begin and end at any of these co-terminal airports. This definition is used to determine whether a given itinerary constitutes a round-trip or a one-way trip. The definition does not include landing areas, used for sightseeing or similar purposes, that which are not specifically named on the air travel ticket.

Preferential lease or use agreement (see Appendix D).

Program Guidance Letters (PGLs) represent interim updates or revisions to FAA Order 5100.38 (“AIP Handbook”).

Project means airport planning, airport land acquisition, or development of a single component; a multi-phased development program (including but not limited to development described in an airport capital plan); or a new airport for which PFC financing is sought or approved (14 CFR § 158.3) (see also definition of *approved project*).

Public agency means a State or any agency of one or more States; a municipality or other political subdivision of a State; an authority created by Federal, State, or local law; a tax-supported organization; an Indian tribe or pueblo that controls a commercial service airport; or a private sponsor of an airport approved to participate in the Pilot Program on Private Ownership of Airports (14 CFR § 158.3).

Remittance means the transmittal of PFC revenue by the collecting air carrier to the public agency.

Revenue passenger means a person receiving air transportation from an air carrier for which remuneration is received by the air carrier, as defined under existing DOT Regulations (14 CFR Parts 217, 241 and 298), except passengers using frequent flyer award certificates, as defined in this Order.

Round trip means a trip on a complete air travel itinerary, to at least one destination point and back, which terminates at the origin point (14 CFR § 158.3).

Secretary means the Secretary of Transportation or other person designated by the Secretary.

Significant business interest means an air carrier or foreign air carrier that: (1) had no less than 1.0 percent of passenger boardings at the airport in the prior calendar year; (2)

⁶ The *Official Airline Guide* (OAG) is a private publication of airline schedules used throughout the aviation industry. The OAG database is updated monthly and includes over 900 of the world’s airline schedules.

had at least 25,000 passenger boardings at the airport in that prior calendar year; or (3) provides scheduled service at that airport (14 CFR § 158.3).

Stand-Alone PFC Debt Financing means a financing instrument backed solely by a PFC revenue stream without the commitment of airport or general revenue.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam (14 CFR § 158.3).

Trip means air travel from one point to another point. In the case of a trip with only one enplanement and one deplanement, the deplanement must not take place at the same point as the enplanement. An air tour that begins and ends at the same point without stopping at intermediate points (other than technical stops such as for refueling) is not a trip for PFC purposes. In addition, travel between a point and a non-airport location, such as a logging camp, is not considered a trip for PFC purposes.

Unliquidated PFC revenue means revenue received by a public agency from collecting carriers, and interest earned on that revenue, that has not yet been used on approved projects (14 CFR § 158.3).

1.1.5 Order Format.

- 1.1.5.1 The Order begins with a legislative history, the delegation of decision authority, and general requirements, followed by procedures to be used by FAA personnel to administer the PFC program.
- 1.1.5.2 The Order also provides instructions to public agencies on the steps to take before filing a PFC application, the filing of the application, and the management of their PFC program. The order also provides information to air carriers about their responsibilities under the PFC program.
- 1.1.5.3 The Order summarizes information from other materials. When direct reference is needed, the current version of the following reference materials must be used:
 - 1. 49 U.S.C. Compilation of Selected Aviation Laws
 - 2. 14 CFR Part 158, Passenger Facility Charges
 - 3. FAA Order 1050.1, Policies and Procedures for Considering Environmental Impacts
 - 4. FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects

5. FAA Order 5100.38, Airport Improvement Program Handbook including any subsequent Program Guidance Letters (PGLs), which are interim updates to the AIP Handbook
6. FAA Order 7400.2, Procedures for Handling Airspace Matters
7. FAA Advisory Circular 150/5300-13, Airport Design
8. FAA Advisory Circular 150/5370-2, Operational Safety on Airports During Construction
9. Those AC's on the list "Current FAA Advisory Circulars for PFC Projects", which are included with each PFC Final Agency Decision and Letter of Acknowledgement
10. Agency directives, regulations, future ACs and Standard Operating Procedures that may pertain to PFCs, and additional information that should be considered companion documents to this Order.

Section 1.2 Title 49, United States Code Section 40117

- 1.2.1 PFC Authority.** The PFC program is authorized by 49 U.S.C. Subtitle VII, Part A - Air Commerce and Safety, Section 40117. This statute was implemented by the Aviation Safety and Capacity Expansion Act of 1990 (Pub. L. 101-508, Nov. 5, 1990), which amended the Federal Aviation Act of 1958 (Pub. L. 85-726, Aug. 23, 1958), as amended, to remove the restriction against a PFC by allowing a limited exception to the Anti-Head Tax Act (49 U.S.C. Section 40116). The PFC statute authorizes the Secretary of Transportation to allow a public agency that controls at least one commercial service airport to impose a fee for each paying passenger enplaned at the airport. This revenue finances eligible projects to be carried out at the commercial service airport or any other airport that the public agency controls.

The Federal Aviation Act of 1994 (Pub. L. 103-298, Aug. 17, 1994); the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104-264, Oct. 9, 1996); the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) (Pub. L. 106-181, Apr. 5, 2000); the Vision 100-Century of Aviation Reauthorization Act (Pub. L. 108-176, Dec. 12, 2003); and the FAA Modernization and Reform Act of 2012 (Pub. L. 112-95, Feb. 14, 2012) made significant modifications to § 40117. The codification of certain United States Transportation Laws (July 5, 1994) changed the U.S.C. references in 14 CFR Part 158. The major provisions of the statute include the following:

- 1.2.1.1 PFC Level.** A public agency that controls a commercial service airport may request the authority to impose a PFC of \$1, \$2, \$3, \$4, or \$4.50 on revenue passengers enplaned at such an airport (49 U.S.C. § 40117(b)).
- 1.2.1.2 Requirements.** A public agency that controls a commercial service airport may be granted authority to impose a PFC only if the FAA finds, on the basis of an application submitted by the public agency, that the amount and duration

of the PFC will not result in excess revenues and the proposed project is eligible; and is adequately justified).

1.2.1.3 **Limitations.** A public agency may not impose a PFC under the following circumstances:

1. On a passenger enplaning on a subsidized flight to an eligible point for which Essential Air Service compensation is paid
2. On a passenger who obtains a ticket for air transportation with a frequent flyer award coupon without monetary payment;
3. On a passenger on flights, including flight segments, between two or more points in Hawaii and in Alaska aboard an aircraft having a seating capacity of less than 60 passengers; and
4. On a passenger on a Department of Defense (DOD) charter flight where DOD arranged and paid for the charter (49 U.S.C. § 40117(e)(1)).

1.2.1.4 **Two Enplanements Per Trip Limitation.** A public agency may not collect a PFC from a passenger for more than two charges per one-way trip or four charges per round trip (49 U.S.C. § 40117(e)(2)).

1.2.1.5 **Air Carrier Rates, Fees, and Charges.** A public agency may not include in its price base the portion of the capital costs of a project paid for by using PFC revenue to establish a price (i.e., a rate, fee, or charge) under a contract between the public agency and an air carrier or foreign air carrier (49 U.S.C. § 40117(g)(1)-(2)). However, the Statute requires that, for PFC funded projects for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not funded by PFC revenue (49 U.S.C. § 40117(g)(3)).

1.2.1.6 **Exclusivity of Authority.**

1. A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency (as noted above in Paragraph 1.2.1) may not tax, regulate, prohibit, or otherwise attempt to control in any manner, the imposition or collection of a PFC or the use of the revenue from a PFC (49 U.S.C. § 40117(j)).
2. No contract or agreement between an air carrier or foreign air carrier and a public agency may impair the authority of the public agency to impose a PFC or impair use of the PFC revenue (49 U.S.C. § 40117(f)).

- 1.2.1.7 **Nonexclusivity of Contractual Agreements.** No project funded with PFC revenue may be subject to an exclusive long-term lease or use agreement with an air carrier or foreign air carrier (49 U.S.C. § 40117(f)(2)). No lease or use agreement of an air carrier with respect to a project constructed or expanded with PFC revenue may restrict the public agency that controls the airport from funding or developing new capacity at that airport with PFC revenue or assigning that capacity as it sees fit (49 U.S.C. § 40117(f)(3)).
- 1.2.1.8 **Collection and Handling by Air Carriers.** Air carriers and their agents are required to collect PFCs imposed by public agencies and must remit those charges, less an FAA-specified handling fee, in a timely manner. The PFCs collected by the air carrier must be noted on the passenger's ticket (49 U.S.C. § 40117(m)).
- 1.2.1.9 **Application Process.**
1. A public agency that wants to impose a PFC must submit an application to the FAA for the authority to impose such a fee (49 U.S.C. § 40117(c)).
 2. The application must contain the information required and be in the form specified by regulation (49 U.S.C. § 40117(c)).
 3. Before the public agency submits an application, it must provide reasonable and sufficient notice to (and an opportunity for consultation with) air carriers and foreign air carriers operating at the airport. The public agency must also provide written notice to the public and provide an opportunity for the public to submit comments on the proposed application (49 U.S.C. § 40117(c)(2)).
 4. After receiving the application, the FAA must make a determination that the application contains all the information required by the regulation. If the FAA determines that required information is missing, it will allow the public agency to supplement the application.
 5. After receiving the application, the FAA has the option to provide notice in the *Federal Register* and an opportunity for additional comment on the application by air carriers and interested persons (e.g., if there is significant controversy or legal or policy issue).
 6. A PFC may only be imposed if the FAA approves an application for the authority to impose the PFC. The FAA has 120 days from receipt of an application (or the application supplement, if applicable) to make a final decision (49 U.S.C. § 40117(c)(4)).
- 1.2.1.10 **Notice of Intent Process.** Public agencies imposing a PFC at a non-hub airport may choose to use the application process or a streamlined Notice of Intent (NOI) process (49 U.S.C. § 40117(l)).

1. A public agency that wants to impose a PFC must submit a NOI to the FAA for the authority to impose such fee (49 U.S.C. § 40117(l)(3)).
2. The NOI must contain the information and be in the form required by regulation and as further developed by the FAA (49 U.S.C. § 40117(l)(3)(A)).
3. Before the public agency submits an NOI, it must provide reasonable notice to, and an opportunity for consultation with, air carriers and foreign air carriers operating at the airport. The public agency must also provide written notice to the public and provide an opportunity for the public to submit comments on the proposed NOI (49 U.S.C. § 40117(l)(2)).
4. A PFC may only be imposed if the FAA specifically notes in its acknowledgement to a NOI that the authority to impose the PFC is granted. The FAA has 30 days from the receipt of a NOI to issue a Letter of Acknowledgement or a Letter of Objection to the public agency (49 U.S.C. § 40117(l)(4)).

1.2.1.11 **Recordkeeping and Audits.** The public agency and the air carriers must follow any regulations that the FAA may issue with regard to the recordkeeping and audits of collection of the PFC and the use of PFC revenue (49 U.S.C. § 40117(h)(1)). If the FAA determines that the collection is excessive or that the revenue is not being used on approved projects or otherwise not properly used, the FAA may terminate a public agency's PFC authority and offset any excess PFC revenue by reducing amounts otherwise payable to the public agency from AIP under the terms of 49 U.S.C. 47114(c) (49 U.S.C. § 40117(h)(1)(2)-3)).

1.2.2 **Reduction in AIP Apportionments Under 49 U.S.C 47114(f).** The AIP entitlement funds apportioned to a public agency that controls a large or medium hub airport will be reduced if the public agency imposes a PFC at that airport. The AIP entitlements will be reduced at the airport collecting a PFC of \$3.00 or less by 50 percent of the projected PFC revenue, but not by more than 50 percent of the entitlement amount that otherwise would be apportioned in the fiscal year. Likewise, the AIP entitlements would be reduced by 75 percent if the public agency is collecting a PFC of more than \$3.00, but not by more than 75 percent of the entitlement amount that otherwise would be apportioned in the fiscal year. The reduction in an apportionment entitlement shall not take effect until the first fiscal year following the year in which the collection of the PFC imposed under Section 40117 is begun.

1.2.3 **Allowable Project Costs Under 49 U.S.C 47110.** Most projects that are eligible for PFC funding are also eligible for AIP grant funds. However, public agencies are reminded to be cautious when following 49 U.S.C. 47110 for PFC projects, especially PFC projects that do not include AIP funds. Some paragraphs of 49 U.S.C. 47110 identify specific types of work as not allowable for the use of AIP grant funds. This direction does not necessarily render those costs as being non-allowable or eligible for

PFC funding. In addition, some costs identified in 49 U.S.C. 47110 as allowable for use of AIP grant funds, such as administrative costs associated with AIP grant requirements, are not allowable or eligible for PFC funding. Public agencies should contact their FAA Airports office in advance of preparing a PFC application for clarification of questions concerning such costs.

Section 1.3 Passenger Facility Charges Under 14 CFR Part 158

1.3.1 PFC Regulation. The PFC Regulation implements the PFC statute and provides public agencies with the flexibility to tailor their PFC programs to their own needs while meeting the requirements of the statute. The PFC Regulation is divided into six Subparts and one Appendix. The Subparts provide general program information; details regarding the application process and post-approval actions; directions to air carriers regarding proper collection, handling and remittance of PFCs; public agency and air carrier reporting and recordkeeping requirements; procedures for FAA termination of a public agency's PFC program; and information on reductions in AIP apportionments for large and medium hub airports collecting PFCs. Appendix C of this Order provides a list of assurances that a public agency must comply with in the conduct of its PFC program.

A brief overview of the sections of each Subpart of the PFC Regulation is provided below. Most of these sections restrict the use of PFC revenue.

1.3.1.1 General. Provides general program information, including:

1. Definitions of significant terms used in the regulation (14 CFR § 158.3)
2. Limitations that prohibit the collection of PFCs from certain passengers (14 CFR § 158.9) (*see* Paragraph 8.2.4)
3. Procedures for a public agency to request that a certain class or classes of air carriers be excluded from the requirement to collect PFCs (14 CFR § 158.11) (*see* Paragraph 2.2.7)
4. Listing of PFC objectives (*see* Paragraph 4.2.4)
5. Listing of project eligibility (14 CFR §§ 158.15 and 158.17) (*see* Paragraph 4.2.3)
6. Requirements for projects proposed to be funded at a PFC level above \$3 (14 CFR § 158.17) including the AIP funding test (*see* Paragraph 4.3.15), airside needs test (*see* Paragraph 4.3.16), and significant contribution test (*see* Paragraph 4.2.5)
7. Requirements for a proposal to use PFC revenue to pay for debt service for non-eligible projects (14 CFR § 158.18) (*see* Paragraph 4.3.11)

8. Requirements for submission of a competition plan (14 CFR § 158.19) (*see* Paragraph 5.3.4.6)
 9. Acceptable methods for submission of required documents (*see* Paragraph 5.2.1).
- 1.3.1.2 Application and Approval. Provides the requirements and procedures for consultation and public notice, application, NOI, and amendment, including:
1. Air carrier consultation process (14 CFR § 158.23) (*see* Paragraph 2.2.8)
 2. Requirements for the public notice and comment process (14 CFR § 158.24) (*see* Chapter 3)
 3. Content of the application (14 CFR § 158.25) (*see* Section 5.3)
 4. Review of applications and the issuance of FAA's decision (14 CFR § 158.27) (*see* Chapter 5)
 5. Content of an NOI, the review of an NOI, and the issuance of FAA's decision (14 CFR §§ 158.29 and 158.29) (*see* Chapter 6)
 6. Requirements for project implementation (14 CFR §§ 158.31 and 158.33) (*see* Paragraph 4.3.17)
 7. Requirements for the timely submission of an application or NOI to use PFC revenue (14 CFR §§ 158.25 and 158.30) (*see* Paragraphs 5.2.1.2 and 6.2.3)
 8. Content and processing of a request to amend a PFC decision (14 CFR § 158.37) (*see* Chapter 11, Chapter 12, and Chapter 13)
 9. Requirements for the use of excess PFC revenue (14 CFR § 158.39) (*see* Paragraph 9.2.6)
- 1.3.1.3 Collection, Handling, and Remittance of PFCs. Contains information on a public agency's notice to air carriers to begin PFC collections, the procedures a public agency must take to alter the approved duration of collection, and the requirements for an air carrier to collect, handle, and remit PFCs, including:
1. The content of a public agency's notice to air carriers and the procedures to follow in issuing such a notice (14 CFR § 158.43) (*see* Paragraph 7.2.1)
 2. The procedures a public agency should follow to modify its approved duration of collection for an application (*see* Section 7.3)
 3. The requirements for the collection of PFCs by air carriers (14 CFR §§ 158.45 and 158.47) (*see* Chapter 8)

4. The requirements for handling PFC collections, from the time the PFC is collected from the passenger until the PFC is remitted to the public agency (14 CFR §§ 158.49 and 1583.51) (*see* Section 8.4)
 5. Additional handling requirements for air carriers operating under bankruptcy protection (14 CFR § 158.49) (*see* Paragraph 8.4.6)
 6. The requirements for the remittance of PFCs from air carriers and foreign air carriers to public agencies (14 CFR § 158.47) (*see* Section 8.4)
 7. Information on the compensation due to carriers and foreign air carriers for collecting, handling, and remitting PFCs (14 CFR § 158.53) (*see* Paragraph 8.4.5)
- 1.3.1.4 Reporting, recordkeeping, and audits. Provides the requirements for reporting, recordkeeping, and auditing the public agency's PFC program and the air carriers' collection, handling, and remittance process, including:
1. Public agency quarterly reports (14 CFR § 158.63) (*see* Paragraph 16.2.1)
 2. The annual report of forecast revenue for public agencies controlling large or medium hub airports (14 CFR § 158.63) (*see* Paragraph 16.2.2)
 3. Air carrier quarterly reports (14 CFR § 158.65) (*see* Paragraph 16.3.1)
 4. Monthly reports required for air carriers operating under bankruptcy protection (*see* Paragraph 16.3.2)
 5. Accounting and recordkeeping requirements for public agencies (14 CFR § 158.67) (*see* Section 16.4)
 6. Audit requirements for public agencies (14 CFR § 158.67) (*see* Section 16.4)
 7. Accounting and recordkeeping requirements for air carriers (14 CFR § 158.69) (*see* Section 16.5)
 8. Audit requirements for air carriers (14 CFR § 158.69) (*see* Section 16.5)
 9. Federal audits of public agencies and air carriers (14 CFR § 158.71) (*see* Section 16.6)
- 1.3.1.5 Termination. Provides the procedures for the termination of PFCs or the loss of AIP funds for violations of the PFC statute or regulation, including:
1. Procedures for the informal resolution of violations of the statute or regulation (14 CFR § 158.83) (*see* Section 15.2)

2. Procedures for the termination of a public agency's authority to impose a PFC (14 CFR § 158.85) (*see* Section 15.3)
 3. The loss of AIP funds because of excessive PFC collections (14 CFR § 158.87) (*see* Section 15.4)
- 1.3.1.6 Reduction in AIP Apportionments. Provides the requirements and procedures for a reduction in AIP apportionments to a public agency controlling a large or medium hub airport that is imposing a PFC, including:
1. The process for the implementation of the reduction (14 CFR § 158.93) (*see* Section 15.4)
 2. The process for the reevaluation of the reduction (14 CFR § 158.95) (*see* Section 15.4)

Section 1.4 Delegation of Authority

- 1.4.1 **From the FAA Administrator.** The Associate Administrator for Airports is delegated limited authority to sign, in coordination with the Chief Counsel, approvals and disapprovals of PFC applications submitted under the PFC Regulation. In certain limited cases, the Associate Administrator for Airports may decide that a decision should be signed by the Administrator, including applications involving the following:
1. Significant policy precedent
 2. Significant legal issues, as determined by the Chief Counsel
 3. Significant controversy, as evidenced by opposition to the FAA's proposed action by the applicant or other airport authorities, airport users, Federal, State or local agencies, elected officials, or communities
 4. Multi-modal projects
 5. Significant airport noise, access, or revenue diversion issues, including compliance with 49 U.S.C. 47521 *et seq.* (the Airport Noise and Capacity Act of 1990 and 49 U.S.C. 47111(e) (Action on Grant Assurances Concerning Airport Revenues)
- 1.4.2 **From the Associate Administrator.** On October 28, 1996, the Associate Administrator for Airports delegated to FAA Regional Airports Division managers, on a limited basis, the authority to sign approvals and disapprovals of certain PFC applications.⁷ Applications retained by Headquarters are those that involve:
1. Significant policy precedent

⁷ FAA, *PFC 10-62.1 Passenger Facility Charge Delegation of Authority*, PFC Update Memorandum 62-10, March 11, 2010.

2. Significant legal issues, as determined by either the Assistant Chief Counsel or FAA Airports office
3. Significant controversy, as evidenced by opposition expressed in the public agency's consultation with air carriers
4. Multi-modal or intermodal projects
5. Significant airport noise, access issues, including compliance with 49 U.S.C. 47521 *et seq.*, and 49 U.S.C. 47111(e) (Action on Grant Assurances Concerning Airport Revenue)
6. Termination protection language (no longer offered)
7. Case-by-case eligibility determinations as per the latest edition of the AIP Handbook and any Program Guidance Letters (PGLs)
8. Blended PFC decisions (also called "commingled authority") which involve a complicated process and unique analyses
9. PFC decisions on debt service for ineligible projects ⁸

FAA does not routinely issue *Federal Register* notices for PFC applications so FAA Airports offices need to pay close attention to the air carrier and public comments included in the public agency's application, as well as the public agency's resolution of these comments. These will be the primary indicator of possible controversies for the application which would indicate that the application is not delegated.

FAA Airports offices should take care in recommending that a PFC application be delegated. FAA Airports offices should contact APP-510 within 10 days of first reviewing the application if they believe that a final agency decision should be made at headquarters to confirm the delegation status.

All decisions on Notices of Intent are delegated to FAA Regional Airports Division managers. In those cases at non-hub airports where the nature of the projects and notice to the FAA contains items in the list above, the public agency must submit a formal application and such an application may not be delegated.

⁸ Some previously ineligible projects were made eligible for PFC funding in the Vision 100 legislation and in a May 23, 2007 change to the PFC Regulation.

Chapter 2. Advance Coordination and Submission of a Draft PFC Application or Notice of Intent

Section 2.1 Overview

- 2.1.1 **General.** PFCs have become an important component of the financing plan of most commercial service airports. The FAA encourages public agencies to discuss their plans to impose and use PFCs with their FAA Airports office, as early as possible in the airport planning process. Public agencies should consult with the local FAA Airports office as early as possible in the project planning stages, before deciding how to use their PFC revenue and for assistance in preparing a PFC application or Notice of Intent (NOI).

This chapter provides direction on the advanced coordination with the FAA and submission of a draft PFC application or NOI. Although optional, the FAA highly recommends the following actions when preparing a draft application or NOI:

1. Develop project details, including description, PFC objective and justification statements, a significant contribution statement (if applicable), and a project schedule for each project (*see* Chapter 4 of this Order).
2. Prepare a financial plan for each project that includes the proposed PFC share of total project costs and the proposed PFC level for each (*see* Chapter 4). It would be most helpful if the Airports Office reviews the entire CIP to provide advice regarding which projects are most likely to be supportable with PFC and AIP funding.
3. Determine the overall PFC level, the proposed charge effective and expiration dates, whether to exclude one or more classes of air carriers, and alternate uses of PFC revenue (*see* Chapter 4, Chapter 5 and Chapter 6).
4. Meet with the FAA to discuss the PFC application or NOI and coordinate draft project details and financial plans.

The following items are required by regulation and are not optional:

1. Meet with the air carriers operating at the airport where the PFC will be imposed (*see* Section 3.2)
2. Issue a public notice (*see* Section 3.3)
3. Prepare any environmental, ALP, and airspace actions required for proposed (*see* Section 4.3)
4. Submit the PFC application or NOI to the FAA

Section 2.2 Optional Application Formulation Meeting and Coordination of Draft Project Details and Financial Plans

2.2.1 Overview. Meetings between the public agency and the FAA may help identify critical issues in the PFC application. Such formulation meetings are optional but are strongly recommended. Multiple meetings may be conducted to refine the draft application materials. The FAA encourages the public agency to coordinate draft project details and financial plans with the FAA Airports office before airline consultation. The early resolution of issues will provide the carriers with more complete information about the PFC application, reduce the need for the public agency to submit supplemental documentation prior to the substantial completion determination, and reduce the time required for FAA review. Since public agencies have a maximum of 6 months after airline consultation and public notice to formally submit the PFC application,⁹ resolving these issues in advance reduces the risk of exceeding this deadline.

Key points to review at an application formulation meeting include the following:

1. Update on the airport's overall CIP
2. Status of approved or pending PFC applications
3. Status of approved revenue collections and disbursements
4. Schedule for new applications or notices of intent
5. Project details (titles, descriptions, eligibility, objectives, justifications and significant contribution) including the following information:
 - a. A description of the project that identifies the work to be performed and where on the airport it is located¹⁰
 - b. One or more clearly stated objectives that conform to the objectives of the PFC statute (*see* 49 U.S.C. § 40117(d))
 - c. An explanation of why the project is needed
 - d. One or more clearly stated and adequately supported significant contribution arguments that conform to the significant contribution criteria of the PFC statute (if applicable) (*see* 49 U.S.C. § 40117(b)(4))
6. Project evaluation criteria
7. Project costs, PFC level and funding strategies

⁹ FAA policy developed during the formulation of the 2001 PFC Order.

¹⁰ Public agencies with multiple airports must identify for which airport the project is intended.

8. Project schedules
9. ALP, airspace, and environmental requirements¹¹
10. Alternative projects or uses (for impose-only projects in applications not required for notices of intent)
11. Carriers to be excluded
12. Description of the Air Carrier Consultation process
13. Public Notice process
14. Proposed PFC level and charge effective and expiration dates
15. Application forms
16. PFC assurances
17. Identification of any additional information needed

In reviewing draft project details and project financial plans, FAA personnel must be careful not to make statements that could be interpreted as predetermining the outcome of the application review process. The FAA may identify problems and suggest corrections in the draft application, but must not make any assurances to the public.

2.2.2 Status of Approved and Pending Applications. It is important that the FAA Airports office discuss project schedules for approved PFC projects; if adequate progress has been made, potential closeouts of approved applications, financing changes that may be needed because of the award of AIP grants for specific projects and the impact of the PFC application on the public agency's existing PFC program.

2.2.3 Project Details. The FAA Airports office should encourage the public agency to submit a draft of the project details for each proposed project before the application formulation meeting. Projects must be described in sufficient detail that someone not familiar with the airport could determine the location of the project and the type of work being done.

It is important that the project justification explain the need for the project. The project objective and significant contribution (if applicable) statements must cite one or more specific PFC objectives or significant contribution criteria in the statute as appropriate

¹¹ Not applicable for non-hub airports if the PFC funding is for the local match of a project in an existing AIP grant, because these requirements will have already been addressed in the review of the corresponding AIP grant in accordance with FAA Order 5100.38D. Only have authority for this through the non-hub program (regulatory).

and explain how the project meets those criteria. Finally, the project details must include the planned physical start and end dates.¹²

A favorable determination on a PFC application may be impeded because of imprecise, inaccurate, or incomplete project titles and descriptions; misunderstandings about project objectives; inadequate justification of projects; or, an inadequate description of the significant contribution of projects for which a \$4 or \$4.50 PFC at large or medium hub airports is proposed. A failure to address these weaknesses before air carrier consultation and public notice comment, and the *Federal Register* comment process (if applicable), can lead to procedural problems and the partial approval or disapproval of a project.

The FAA should also identify those projects that are not eligible for PFC funding and those projects for which eligibility will be determined on a case-by-case basis.¹³

2.2.4 Project Costs, PFC Levels and Funding Strategies. The financial plan for each project must be presented at the airline consultation meeting and in the PFC application. The financial plan must meet the requirements specified in Paragraph 4.3.13. The FAA Airports office should encourage the public agency to submit a draft financial plan for each proposed project prior to the application formulation meeting. It is important that the FAA confirm that the public agency's financial plan provides the following information:

1. Reasonable cost estimates for each project
2. Which costs for each project are eligible costs, to the extent that such information is available at this stage of the process (advanced coordination is strongly recommended for terminal projects because the process of determining the eligibility of each terminal project is time consuming)
3. Existing AIP entitlement and discretionary grants
4. Reasonable assumptions about the availability of AIP entitlement and discretionary funds in the future
5. Credible sources of any additional funds. This is further discussed in Paragraph 4.3.13.3.

If the financial plan includes AIP discretionary funds, the public agency must develop an alternate funding plan that does not rely on such funding. An alternate funding plan is not required for projects submitted in a NOI.

The FAA cannot approve a \$4 or \$4.50 PFC level for projects that it reasonably expects will be eligible for AIP funds (49 U.S.C. § 40117(b)(4)(B)) (*see* Paragraph 4.3.15). If a

¹² Detailed project descriptions, justifications, etc., are not required for NOI projects in an existing AIP grant.

¹³ Providing the public agency with feedback on project details during application formulation does not preclude the FAA from making further determinations regarding project eligibility, justification, etc. during application review.

PFC-funded project depends on the completion of a non-PFC funded project, the public agency must demonstrate that it has adequate funding to complete the non-PFC project (*see* Paragraph 4.3.13).

Any application for a project that proposes PFC funding in excess of the amounts shown in Paragraph 4.3.13.1 must include cost information beyond what is found in Attachment B or Attachment H. This requirement is in response to a 2003 Court decision¹⁴ that specifically requires the FAA to review detailed project cost information (*see* Paragraph 4.3.13.1). This cost information is required so the FAA can determine if an application is substantially complete.¹⁵ Each Attachment B or Attachment H form must be signed by the FAA official who reviewed the basis of the cost information and determined that the request is reasonable and will not result in the collection of excess PFC revenues.¹⁶ In addition, the FAA may request detailed cost information for any project if it believes that information is required to determine eligibility and reasonableness of cost.

- 2.2.5 Project Schedules and Environmental, Airspace and ALP Requirements.** Project schedules must consider regulatory requirements for both subsequent use approval (if submitted as impose-only) and project implementation as provided in Paragraph 4.3.17. The FAA must carefully review the public agency's project schedules to ensure that it is realistic and consistent with other milestones. For instance, if it appears that the public agency will not be able to seek use authority within three years of the charge effective date for a project in the PFC application or within 3 years of the application's decision date, the public agency should be discouraged from submitting that project for impose authority.¹⁷

Similarly, if the public agency intends to submit projects for "use" approval,¹⁸ the FAA Airports office must confirm the status of ALP, airspace and environmental actions. Use or impose-and-use applications are "not substantially complete" until these actions are completed.¹⁹ These requirements also apply to a NOI.

The FAA should inform the public agency that it (the Public Agency) will be responsible for any required coordination of construction activities with the appropriate FAA offices (Airports, the Air Traffic Organization, and Flight Standards) after the FAA approves a project. The public agency must also coordinate security projects with the Transportation Security Administration and include a letter from the TSA's Facility Service Director in the application certifying that the project is in the airport's Security Plan and meets the 49 CFR Part 1542 requirements. In addition, for a terminal project including security

¹⁴ *Village of Bensenville, et al. v. Federal Aviation Administration*, 376 F.3d 1114, 1122 (D.C. Cir. 2004)

¹⁵ See 14 CFR § 158.27(b).

¹⁶ Policy requiring FAA signature of cost reasonableness was established in PFC Update 50-06 (*see* Paragraph 4.2.1 for greater detail)

¹⁷ See Paragraph 5.2.1.2.2 and Paragraph 6.2.3.2 for additional information regarding the charge effective date and the date of the application's decision date. See 14 CFR § 158.33(c)(1).

¹⁸ Not applicable for non-hub airports if the PFC funding provides the local match of a project in an existing AIP grant, since these requirements have already been addressed in the review of the corresponding AIP grant.

¹⁹ In extraordinary cases, FAA may use the 30-day review period to determine if an application is substantially complete. See 14 CFR § 158.33(c)(1).

checkpoint facilities or a Federal Inspection Service facility, the public agency must obtain a letter from the TSA, the U.S. Customs and Border Protection, and the U.S. Department of Agriculture Animal and Plant Health Inspection Service, as applicable, stating that they will staff the facility.

- 2.2.6 **Alternative Projects or Uses of PFC Revenues.**²⁰ The public agency's PFC application must provide eligible alternative uses of the PFC revenue (*see* 14 CFR § 158.25(b)(13)(ii)). This ensures that the revenue will be used on approvable projects if a proposed primary project is ultimately abandoned or disapproved. The alternate uses must cover at least five years of collection or the value of the impose-only projects, whichever is less. Alternate uses may include other projects, projects that were approved in prior PFC applications, or the early retirement of outstanding PFC-funded debt. The public agency must consult with its air carriers in the preparation of these alternatives and publish this information in the public notice.
- 2.2.7 **Exclusion of a Class or Classes of Carriers (14 CFR § 158.30).** It is important that the FAA discuss the definitions of any classes of carriers to be excluded from the collection of PFC revenues with the public agency prior to the air carrier consultation meeting. The FAA should also advise the public agency that the FAA cannot offer a final determination on the eligibility of a class for exclusion until the application or NOI has been formally submitted. Details on class exclusion can be found in Paragraphs 5.3.3.3 and 6.5.3.
- 2.2.8 **Air Carrier Consultation Process (49 U.S.C. § 40117(l)(2) and 14 CFR § 158.23).** The FAA Airports office should use the application formulation meeting to share the air carrier consultation experiences of other public agencies with the applicant. The FAA Airports office should review the public agency's list of air carriers to be consulted to ensure that all "significant business interest carriers" (*see* definition in Paragraph 1.1.4) are included. The FAA should also explain the requirements of the consultation process, including the notice to carriers, the timing of the consultation meeting, and waiting at least 30 days for carrier certifications of agreement or disagreement before submitting the PFC application or NOI. Finally, it is important that the FAA advise the public agency that the air carrier consultation is only valid for six months after the consultation meeting (or after the notice if a meeting is not required) and that the application must be officially submitted within that time period.

There is no required method of notifying the significant business interest carriers of the scheduled air carrier consultation meeting. However, if there is a question about the notification and the public agency cannot verify that a particular carrier has been contacted, the PFC application process will be halted until there is proper notification. Certified mail or electronic mail with return receipt provide verification.

The FAA should advise the public agency that the air carrier consultation meeting must take place at least 30 days before the planned submission of the PFC application (*see* Paragraphs 5.2.1.2 and 6.2.3) to allow for air carrier comment period of that length (*see*

²⁰ For impose-only projects in applications, not required for impose-only projects in notices of intent.

14 CFR § 158.23(b) as well as airport consideration of the air carriers' views. In the case of a "use only" application, where a meeting may not be required (*see* Section 3.2), the written notice to air carriers must be issued at least 30 days before the application is to be submitted. The public agency may need to allow additional time so that its required responses to the air carriers' comments can be included in the application.

Because these are statutory requirements, the FAA cannot reduce the 30-day notice before the consultation meeting, the 30-day comment period after the consultation meeting, or waive the consultation meeting (*see* 49 U.S.C. § 40117(c)).

The FAA has no formal role in carrier consultations. Ordinarily, FAA personnel are discouraged from attending such meetings to avoid the appearance of undue interference or prejudgment. In certain limited circumstances, FAA personnel may attend the consultation meeting as an observer only. While the primary responsibility for conducting carrier consultation rests with the public agency, the FAA does have a duty to ensure that proper (timely and sufficient) notice was provided to the air carriers, and that the consultation materials provided sufficient and accurate information for the air carriers to provide meaningful input. For complex or controversial projects or amendments, the FAA recommends that the public agency provide the FAA with an opportunity to review a draft of the notice to air carriers and the public notice.

- 2.2.9 **Public Notice Process.** The public agency is required to provide a notice and opportunity for public comment prior to submitting a PFC application or NOI. The public agency must give the public at least 30 days, but not more than 45 days, to file comments on the application, NOI, or amendment (*see* 49 U.S.C. § 40117(c)(3)). The comment period is measured from the date of publication of the notice or the date of posting of the notice on the public agency's website. See Section 3.3 for specific instructions on distribution of the public notice.
- 2.2.10 **PFC Levels and Charge Effective and Expiration Dates.** The FAA Airports office should discuss with the public agency the particular requirements for the proposed PFC level, including PFC objectives that must be met and the additional requirements for the \$4 and \$4.50 level, if applicable. The FAA should also explain that the charge effective and expiration dates must be *on the first of a month* and that the charge effective date must be *at least 30 days* from the date of the FAA's decision on the application. In cases of an initial application or a new application after a break in collections, the charge effective date must be *within one year* of the decision date.
- 2.2.11 **Application Forms.** It is important that the FAA Airports office discuss the format for the PFC application or NOI with the public agency, as well as the procedure for submitting it. The PFC application or NOI must be submitted in the form specified in Chapter 5 or Chapter 6, as applicable. Applicable forms are located on the FAA's public website at [Airports Forms](#).
- 2.2.12 **PFC Assurances.** The FAA Airports office should review the PFC assurances with the public agency, paying particular attention to the linkage between PFC collection authority and compliance with national aviation noise policy 49 U.S.C. 47523 through 47528 (*see*

Paragraph 5.3.4.4 and revenue diversion assurances (*see* Paragraph 5.3.4.5). If the application includes terminal construction or rehabilitation projects, the public agency must assure the FAA that the terminal, or portion of the terminal funded with PFC's will comply with the assurances pertaining to non-exclusivity of contractual agreements, carryover provisions, and competitive access (*see* 49 U.S.C. § 40117(f)). The public agency may need to provide the FAA with a copy of the lease for PFC-funded terminal areas that will be leased to air carriers and that submission of these documents to the FAA in advance of the submission of the application will minimize PFC processing time.

The public agency, by signing the PFC application, FAA Form 5500-1, agrees to comply with all assurances (Part IV, Item 7 of the form contains all of the public agency certifications, including complying with the assurances). Therefore, a copy of the PFC assurances does not need to be submitted in the application package.

2.2.13 Identification of Additional Information. Additional project information, which may be needed for the FAA's review of PFC project eligibility, reasonableness of cost and other items once the application is formally submitted, should be identified at this time. This information helps the FAA make findings about project eligibility, objective, justification, and when appropriate, significant contribution. The following additional information may be requested.²¹

1. Sketch(es) depicting proposed projects
2. Part 150 studies
3. Part 139 inspections
4. Current noise contours supporting noise mitigation projects
5. Pavement condition surveys
6. Documentation of demand by critical aircraft, including haul length
7. List of Federally-funded/PFC-financed equipment
8. Snow removal and ice control plan
9. Airport leases for terminals
10. Airport capacity information for ground access projects (*see* Table 4-5)
11. Information on existing air carrier competition at the airport (*see* Paragraph 5.3.4.6)
12. Competition plans for a covered airport (*see* Paragraph 5.3.4.6)

²¹ Because some of the documents listed are lengthy, the public agency should consult the FAA Airports office to determine which documents should be included with the application or NOI.

Section 2.3 Submittal and Review of Draft Application or Notice of Intent

2.3.1 General. Although optional, the FAA Airports office encourages the public agency to submit a complete draft of the PFC application or NOI for FAA review and comment before officially submitting it. The FAA should review key portions of the draft application or NOI, paying particular attention to the following items:

1. The project details
2. The air carrier notification list
3. The public agency's responses to any air carrier disagreements
4. Any air carrier class exclusion definitions
5. The timeliness of project implementation schedules
6. The status of required ALP, airspace, and environmental approvals

The FAA encourages public agencies to review and coordinate terminal projects with it in advance, since the process for determining their eligibility is time consuming. However, since some applications or notices of intent are very lengthy the FAA may not be able to provide as detailed a review of the drafts as may be necessary. FAA will review the draft as thoroughly as is practicable.

Any deficiencies that the FAA finds in the application or NOI must be communicated in writing to the public agency. If there are numerous substantive comments, a working meeting with the public agency may be necessary to resolve the issues prior to formal submittal of the application or NOI. It is best that the public agency be informed in the written correspondence that any FAA opinions expressed during the draft application review process are preliminary and may be modified or expanded based on new information contained in the formal submittal of the application, or after further FAA analysis before the substantial completion determination.

2.3.2 FAA Review of Draft Application or Notice of Intent. As a best practice, the FAA Airports office should try to review the draft application within 45 days of receipt. The public agency should conduct as much advance coordination with the FAA as possible, since the additional review time needed for multiple draft applications may prevent the submission of a formal application before the expiration of the carrier consultation meeting.

Formal Submittal of PFC Application or Notice of Intent. After addressing the FAA's comments on the draft application or NOI and meeting the consultation and public notice requirements, the public agency may formally submit the application for FAA processing. This action will start the 30-day clock for the substantial completion determination for a PFC application or the issuance of an FAA acknowledgement or

objection letter for a NOI (*see* Chapter 5 and Chapter 6 for additional information on application and NOI processing, respectively).

Chapter 3. Consultation and Public Notice

Section 3.1 Overview

3.1.1 **General.** The PFC Regulation requires that public agencies consult with air carriers having a significant business interest²² in the airport and issue a public notice to provide for public comment prior to submitting:

1. An application to the FAA for authority to impose or use a PFC
2. A Notice of Intent (NOI) to impose or use a PFC, or
3. A request to amend the FAA's decision on an approved PFC that meets certain criteria (*see* Chapter 11)²³

Section 3.2 Air Carrier Consultation

3.2.1 **Requirement to Consult.** Section 158.23 of the PFC Regulation states that prior to submitting any of the documents listed above, the public agency must provide written notice to all air carriers and foreign air carriers having a significant business interest in the airport,²⁴ except those carriers that the public agency requests be excluded from the requirement to collect PFC's.²⁵ In most cases, this means that a carrier operating under a parent airline must also be sent a consultation notice unless the parent company provides a letter indicating they as the parent company will be responsible for comments.

If a consultation meeting is required, it must be held no sooner than 30 days, nor later than 45 days, after issuance of the written notice (14 CFR § 158.23(b)).

3.2.2 **Requirement for Consultation Meeting.** All applications or notices of intent requesting the authority to impose a PFC, and for requests to amend the FAA's decision on an approved PFC that meets certain criteria, require a consultation meeting (*see* Section 11.2). At such a meeting, the public agency will present the projects proposed to receive PFC funding.

²² See 14 CFR §§ 158.3 and 158.23. This means an air carrier or foreign air carrier that: (1) Had no less than 1.0 percent of passenger boardings at that airport in the prior calendar year; (2) had at least 25,000 passenger boardings at the airport in that prior calendar year; or (3) provides scheduled service at that airport.

²³ See 14 CFR § 158.23.

²⁴ A common question is whether the public agency must use certified mail to notify the significant business interest carriers. The answer is no. However, if there is a question regarding notification of a particular carrier or carriers and the public agency cannot verify that a particular carrier or carriers have been notified, then the PFC application process will stop until proper notification and consultation have been completed. (In the case of an NOI, the FAA would object to the NOI in its entirety.) The use of certified mail provides verification that a particular carrier has been notified. Another option would be to use electronic mail with return receipt.

²⁵ Caution: If the public agency does not consult one or more carriers with a significant business interest in the airport and the FAA finds that those carriers are not likely to be approved to be excluded, the FAA Airports office will find the application Not Substantially Complete, or object to the NOI, if applicable, and the public agency will need to re-consult with the air carriers. This will slow the application process. *See* Paragraph 5.3.3.3.

A consultation meeting is not required for applications or notices of intent requesting only the authority to use PFC revenue, unless there have been changes in the scope of the projects or the methods of financing the projects since the original impose only application was approved (14 CFR § 158.25(c)(2)(i)). In those applications and notices of intent with no changes, a notice will suffice; although the public agency may still choose to hold a consultation meeting. The carriers have 30 days from the date of issuance of the notice to submit their certificate of agreement or disagreement to the public agency (14 CFR § 158.23(c)(2)).

3.2.3 Content of Notice to Carriers When a Meeting is Required (14 CFR §§ 158.23). The written notice to air carriers must include, at a minimum, the following information:

1. Descriptions of projects being considered for funding by PFC's (including alternative project(s) in the case of applications with impose-only projects). The description must provide enough detail that the carriers can understand the scope and reason for each project. The description must include the amount requested and funding type;
2. The PFC level requested for each project; the proposed charge effective date and estimated charge expiration date for the application, NOI, or a change to these dates because of the amendment; the estimated total PFC revenue to be collected
3. The proposed charge effective date and estimated charge expiration date for the application, NOI, or a change to these dates because of the amendment; the estimated total PFC revenue to be collected.
4. For a request by a public agency that any class or classes of carriers be excluded requires further information, including:²⁶
 - a. The description of each class
 - b. The names of the carriers belonging to each class
 - c. The estimated number of passengers enplaned annually by each class
 - d. The public agency's reasons for requesting that carriers in each class be excluded.
5. Except as provided in 14 CFR §158.25(c)(2), the date and location of the consultation meeting. The meeting date must be at least 30 days, but not more than 45 days, from the date the notice is issued.

The FAA Airports office should strongly encourage the public agency to include as much of the information that will be presented at the meeting as possible in its notice, to give the carriers time to review the proposals. Supplemental information may be sent after the notice, but prior to the meeting. Public agencies must send a copy of the notice to carriers to their FAA Airports office.

²⁶ Public agencies must consult the official Air Carrier Activity Information System (ACAIS) report when excluding air carriers, not the preliminary ACIAS report.

3.2.4 Content of Notice to Carriers When a Meeting is Not Required. When a meeting is not required, the notice to carriers must contain the items listed in Paragraph 3.2.3 above, except for Item 4. In addition, the notice must contain the following information:

1. A detailed description of each project proposed to be funded with PFC revenue (including alternative projects in the case of applications with impose-only projects)
2. The justification for the projects
3. A detailed financial plan for each project, which must include:
 - a. The estimated allowable project costs, allocated to major project elements (project operation and maintenance costs may be included, but are not required)
 - b. The estimated PFC revenue that will be used to finance each project
 - c. The source and amount of other funds, if any, needed to finance each project
4. A statement that the air carrier has 30 days following issuance of the notice in which to provide the public agency with a written certification of its agreement or disagreement with the proposed projects and that if the carrier fails to submit a written certification, it will be considered to have certified its agreement with the proposed projects.²⁷

3.2.5 Carrier Written Acknowledgment of Notice. Within 30 days of the issuance of the public agency's written notice, each carrier must provide the public agency with a written acknowledgment that it received the notice. This acknowledgement may be in the form of a letter to the public agency sent via regular mail or may be submitted via electronic mail. If the air carrier does not provide written acknowledgment of the notice, it will be assumed that it has received notification. The public agency is encouraged to send its notice 'return receipt requested.' The signed returned receipt is adequate verification of carrier notification in the event that one or more carriers should challenge the thoroughness of the notification procedure.

3.2.6 Consultation Meeting. In addition to the information in the written notice, the public agency must provide the carriers, at or before the meeting, with the same additional information specified in Paragraph 3.2.4, Items 1-3.

The consultation meeting is an opportunity for the public agency and the carriers to discuss the scope, financing, and timing of the proposed projects.

The FAA has sometimes agreed to a reduction in the 30-day notification time before the consultation meeting, a reduction in the 30-day comment period after the consultation meeting, or a waiver of the consultation meeting itself, if all the carriers serving the airport agreed, in writing, with the reduced time frames or waiver of the consultation

²⁷ See 14 CFR § 158.23. If a meeting is not required, each carrier must provide the public agency with a written certification of its agreement or disagreement with the proposed projects within 30 days of the issuance of the notice.

meeting. Because of a change in the statute²⁸ that removed the mandatory *Federal Register* Notice requirement, the FAA will no longer allow any of these changes.

The FAA has no active role in carrier consultations. FAA personnel are discouraged from attending consultation meetings to avoid the appearance of undue interference or prejudgment. In certain limited circumstances, FAA personnel may attend the consultation meeting as an observer only.²⁹

- 3.2.7 **Carrier Written Certification of Agreement or Disagreement.** Within 30 days of the consultation meeting (within 30 days of the public agency's notice to the carriers if a meeting is not required), each carrier must provide the public agency with a written certification of its agreement or disagreement with each proposed project (*see* 14 CFR § 158.23). Conditional agreements and agreements with comments are generally considered as agreement. However, the public agency is required to address any substantive issues raised in these comments since these comments are likely to raise issues of concern to the FAA. A certification of disagreement must contain the reasons for such disagreement or the certification of disagreement will be void.
- 3.2.8 **Carrier Failure to Provide Written Acknowledgment or Certification of Agreement or Disagreement.** If a carrier fails to provide the public agency with timely acknowledgment of the written notice or timely certification of agreement or disagreement with each proposed project, the carrier is considered to have certified its agreement (*see* 14 CFR § 158.23(c)(3)). Any certifications of disagreement received from an air carrier within the 30 days following the consultation meeting must be addressed in the public agency's application, even if that air carrier neglected to acknowledge the public agency's written notice (*see* 14 CFR § 158.23(c)(2)). Although it is not required, the FAA Airports office should encourage a public agency that receives a certification of disagreement after the 30 day comment period to address the carrier's objections. Such a practice ensures that the FAA has all the information it needs.
- 3.2.9 **Summary of Consultation.** The public agency must provide a summary of the consultation process in its application. Although a format for the summary is not specified, the summary must include:
1. A list of carriers having a significant business interest at the airport and those carriers notified
 2. A list of carriers that acknowledged receipt of the notice
 3. Lists of the carriers that certified agreement and those that certified disagreement with each project

²⁸ Vision 100—Century of Aviation Reauthorization Act

²⁹ Vision 100—Century of Aviation Reauthorization Act

4. A summary of substantive comments made by carriers in any certifications of disagreement with a project, and the public agency's reasons for proceeding despite this disagreement³⁰

The public agency must thoroughly address any carrier disagreements. The FAA will use the public agency's response to analyze the project and respond to the carrier's disagreements in the Final Agency Decision (FAD). The failure to adequately address such disagreements may lead the FAA to disapprove part or all of a project.

Section 3.3 Public Notice

- 3.3.1 Requirement for Public Notice.** A public agency must issue a written public notice and provide the public with an opportunity to comment on an application, NOI, or amendment.³¹ This requirement replaces the requirement to issue a *Federal Register* Notice, which is now optional.³² The requirement to issue a public notice cannot be waived.

The written notice must give the public at least 30 days, but not more than 45 days, to file comments on the application, NOI, or amendment. The comment period is measured from the date of publication of the notice or the date of posting of the notice on the public agency's website (*see* 14 CFR § 158.24).

- 3.3.2 Contents of Public Notice.** The public notice must include the following information:

1. A description of each project the public agency is proposing to fund with PFCs
2. A brief justification for each project
3. The proposed PFC level for each project
4. The estimated total PFC revenue for each project
5. The proposed charge effective date for the application or NOI
6. The estimated charge expiration date for the application or NOI
7. The estimated total PFC revenue for the application or NOI
8. The name and contact information for the person at the public agency to whom comments should be sent (*see* 14 CFR § 158.24(b)(1)).

³⁰ The public agency must address all adverse comments. The public agency must provide a summary and analysis of those comments in Attachment B of the PFC application (Attachment H of a NOI). The public agency is encouraged to keep a transcript or detailed notes of the meeting to verify, if necessary, that a specific project was discussed at the meeting.

³¹ See 49 U.S.C. § 40117(c)(3) and 14 CFR § 158.24.

³² Vision 100—Century of Aviation Reauthorization Act

The information required for a public notice is more extensive than that required for air carrier consultation because there is no required meeting for the public. Therefore, all details about the application or NOI must be provided in the notice.

If a member of the public requests additional information about the projects, the public agency must provide any that may help the public understand the projects) and the need for them (*see* 14 CFR § 158.24(b)(2)). This may include sketches, current noise contours, and other information that the public agency has provided (or will provide) to the carriers during consultation or will provide to the FAA in the application, NOI, or amendment. The public agency is not required to provide documentation not already available for the sole purpose of responding to a request from the public.

3.3.3 Distribution of the Public Notice. The public agency must make the public notice available to the public and other interested parties in one or more of the following ways:

1. Publication in one or more local newspaper of general circulation
2. Publication via other local media
3. Posting of the notice on the public agency's website
4. Any other method acceptable to the FAA (the public agency must contact its FAA Airports office to obtain such approval) (*see* 14 CFR § 158.24(c))

3.3.4 Summary of Public Notice. The public agency must include the following in the application or NOI.

1. Information on the method used to distribute the public notice (including a copy or computer screen shot of the notice)
2. A copy of all public comments
3. A summary of any public disagreements with the projects
4. The public agency's reasons for continuing with the projects despite such disagreements

Section 3.4 Re-Consultation and New Public Notice

3.4.1 General. Two situations may require the public agency to re-consult with carriers and provide a new opportunity for public comment: changes by the public agency after consultation and public notice, or if the consultation or public notice expire.

- 3.4.2 **Changes by the Public Agency After Consultation.** The public agency may decide to change project descriptions, scope, financing plans and estimates of allowable project costs after carrier consultation and public notification are completed but before the application has been submitted to the FAA. Such changes might follow new engineering studies, changes in aviation demand, responses to carrier concerns, or new cost information. In such cases, the public agency should follow the guidelines for consultation on amendments (*see* 14 CFR § 158.37(b)(1)). As a general rule, an increase in PFC-funded allowable costs for a project of 25 percent or more (if the amount was more than \$1 million), a change in the scope of any project, or a change in the financing plan of any project, would require re-consultation and a new meeting before the application could be submitted. Adding new projects or changing a project's status from 'alternative' to 'primary' would always require re-consultation and a new opportunity for public comment.
- 3.4.3 **Timeframe for Consultation and Public Notice.** The application or amendment must be submitted within six months of the consultation meeting (or the notice to carriers if a meeting was not required) or when the public notice is issued, whichever occurs first.³³ If the time limit for the consultation and public notice expires, the public agency must re-consult with the carriers, including holding a meeting, and must re-publish the public notice prior to submitting the application or amendment to the FAA.

In certain circumstances, the FAA may permit a longer timeframe (up to one year). Longer time periods between consultation and application submission increase the risk that the public agency will be required to re-consult due to a change in project cost, scope, or other developments. For instance, the FAA has determined that a public agency **must** re-consult with air carriers prior to submission of an application if one or more air carriers not invited to the initial consultation begin service at the airport during the period between the consultation and the submission of the application. The longer the time period between consultation and application, the greater is the risk.

If the public agency determines that it needs a longer timeframe, it must coordinate such a request with the FAA Airports office before it submits the application or amendment. In turn, the FAA Airports office must coordinate the request with the FAA Regional office and Headquarters. Such a request will be approved by APP-1 or designee.

In those cases where new air carriers begin service to an airport collecting a PFC, the public agency must notify the air carrier within 30 calendar days of the requirement to collect and remit PFC revenue to the public agency.

³³ FAA policy developed during the formulation of the 2001 PFC Order.

Chapter 4. Project Evaluation Criteria

Section 4.1 Overview

- 4.1.1 **General.** This chapter describes the criteria for evaluating projects included in a PFC applications or notices of intent. The requirements for project justification, eligibility, objective, and if applicable, significant contribution are provided. Directions are also provided regarding the evaluation of project costs. Section 4.3 provides instructions for the review of specific project types, and the additional criteria that must be considered regarding AIP funds, airside needs, and airspace, Airport Layout Plan (ALP), and National Environmental Protection Act (NEPA) requirements.
- 4.1.2 **Applicable Federal Acts, United States Code, Code of Federal Regulations, and Orders.** Several FAA authorizations (Federal Acts) have direct impact on the PFC program and the review of projects. Likewise, Federal statutes and regulations also have direct impact on the PFC program and review of projects for use of PFC funds. Many are referenced in this chapter:
1. Federal Aviation Administration Authorization Act of 1994 (Pub. L. 103-305, Aug. 23, 1994).
 2. Federal Aviation Reauthorization Act of 1996 (Pub. L. 104-264, Oct. 9, 1996).
 3. Federal Aviation Reauthorization Act of 2000, also known as the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (**AIR-21**) (Pub. L.106-181, Apr. 5, 2000).
 4. Federal Aviation Reauthorization Act of 2003, also known as **Vision 100** – Century of Aviation Reauthorization Act (Pub. L. 108–176, Dec. 12, 2003).
 5. 49 U.S.C. § 40117 Passenger Facility Fees, commonly referred to as the “**PFC Statute**”
 6. 49 U.S.C. § 44517 Program to permit cost sharing of air traffic modernization projects
 7. 49 U.S.C. § 44901 Screening passengers and property
 8. 49 U.S.C. Chapter 471 Airport Development
 9. 14 CFR Part 139 Certification of Airports
 10. 14 CFR Part 150 Airport Noise Planning
 11. 14 CFR Part 158 Passenger Facility Charges, commonly referred to as the “**PFC Regulation**”
 12. 49 CFR Part 1542 Airport Security

13. FAA Order 5100.38 Airport Improvement Program Handbook, commonly referred to as the “**AIP Handbook**”

- 4.1.3 **Project Description.** For the FAA to properly evaluate PFC applications, public agencies must provide clear descriptions and background information that would allow someone not familiar with the particular airport to understand the justification, eligibility, objective, and, when necessary, significant contribution of the proposed projects. The FAA is responsible for making all determinations required by statute and regulation.

Section 4.2 Criteria for FAA Review

- 4.2.1 **General.** In accordance with the PFC Statute and PFC Regulation, the FAA must review and make certain determinations about PFC applications submitted by public agencies in the following areas:

1. Project description
2. Project justification
3. Project eligibility
4. Project objective
5. Significant contribution (for large and medium hub airports applying to collect above the \$3.00 level)
6. Project costs
7. Airspace, ALP, and NEPA requirements
8. AIP funding test
9. Airside needs test
10. Implementation and completion schedule
11. Disagreements and negative comments
12. Notice and opportunity for public comment

- 4.2.2 **Project Justification:** The Federal Aviation Administration Authorization Act of 1994 established that ‘adequate justification’ is required for each PFC project, but offered no specific instructions (Pub. L. 103-305, Sec. 204). However, the FAA has used a consistent approach in evaluating whether a project has adequate justification since the PFC Final Rule was published on May 30, 2000 (65 Fed. R. 34536) by evaluating its cost-effective contribution to one or more of the PFC Regulation objectives on a case by case basis. The justification must establish that:

1. The project meets the PFC Regulation objectives,

2. The project is cost-effective compared to other means to accomplish the objectives, and
3. Based on FAA guidance and informed opinion, the cost is reasonable when compared to the capacity, safety, security, noise, and competition benefits of the project. Such benefits may be quantitative or qualitative but must be clearly described.

The role of informed opinion in establishing the criteria for evaluating projects is critical. Informed opinion may be provided by the public agency, persons or entities providing comments on the project, and FAA personnel. The FAA must clearly discuss its evaluation of these opinions in the Attachment B.

In general, the more costly a project, the more substantial its benefits should be, although there is no requirement for benefit-cost analysis (BCA) of PFC projects exceeding a certain cost threshold. Thus, informed opinion need not conclude that a project would result in a positive BCA, but only consider that the sum of aeronautical benefits are not disproportionately less than project costs. If a BCA is available for a project, the FAA should encourage the public agency to include it in the applications.

4.2.2.1 **Enhance Competition.** To justify a project through its ability to enhance competition between or among air carriers, the public agency must describe the following:

1. The existing conditions that limit competition between or among air carriers at the airport
2. The manner in which the project will foster enhanced competition between or among carriers
3. The expected results of such initiatives

The FAA will rely on documentation provided by the public agency, and air carrier and public comments, to determine if the proposed projects will enhance competition (*see* 14 CFR § 158.25(b)(7)).

4.2.2.2 **Adequate Justification of AIP Local Share Matches.** If the public agency is proposing to use PFC revenue to pay for the non-federal share of a project being funded with an AIP grant, the public agency must consider the following:

1. If the proposed project is being partially funded by an AIP grant, the justification used for the AIP grant may be used in the PFC application. A statement that the PFC project is a reimbursement for the local share of an AIP grant by itself will not be considered adequate justification. It is necessary to relate the information in the AIP justification to the criteria outlined above to meet PFC requirements.

2. All PFC projects are subject to air carrier consultation and public comment, so the PFC project descriptions must be clear enough that a person who is not familiar with the airport will be able to determine the project scope. If the description mentions only the AIP local match without explaining the project objective and justification, the ability of air carriers and the public to offer meaningful comment may be limited.
3. The public agency must clearly state its intention to use PFC revenue to pay for the non-federal share of an AIP grant in the Attachment B or H.

4.2.3 **Project Eligibility.** PFC funding can only be used for project meeting the eligibility requirements in the AIP Handbook and PFC Regulations. Airport projects that are eligible under AIP are generally eligible for PFC funding, but some projects that are not eligible under AIP are eligible for PFC funding. In some cases, certain AIP eligible items, such as AIP administrative costs or other costs strictly necessary to meet AIP requirements (but not PFC requirements) cannot be funded with PFC revenue. AIP funding priorities do not affect project eligibility.

A project in some PFC applications may consist of two or more project elements grouped into a larger project (e.g., terminal construction or rehabilitation). In such a case, the public agency must provide a detailed description of the elements of the projects so the FAA will be able to determine the eligibility of each project element. Applications that lack sufficient detail about each project element will be found not substantially complete at the time of the completeness determination. The absence of such information may lead to disapproval, since the FAA is mandated by court decision to determine eligibility no later than the use application stage (*Air Transportation Association of America v. Federal Aviation Administration*, 169 F.3d, 5 (March 5, 1999)). Only the FAA can determine project eligibility, so the public agency portion of the Attachment B should not discuss the project's eligibility.

4.2.3.1 **Project Eligibility Considerations for Airport Terminal Projects.** More elements of a terminal development project are eligible for PFC funding than are eligible for AIP funding. To simplify what portion of a terminal project is eligible for PFC funding during the application process, the FAA has adopted a new policy that allows the public agency to assume that 65 percent of the overall terminal project costs are eligible. However, the project and application must not be closed until accurate cost information is provided to the FAA so it can establish the final eligible cost, in accordance with PFC statutory and regulatory requirements. The final cost, and therefore the final eligible amount, may ultimately be greater or less than 65 percent.

Using the 65 percent eligibility policy does not relieve the public agency from the responsibility to provide more accurate cost estimates for the terminal development project when accurate information is available, which may not be until the beginning of actual construction. An over reliance on the 65 percent eligibility policy might present difficulties if the final eligibility is significantly less than 65 percent. Therefore, the public agency must carefully

consider whether the 65 percent standard eligibility is best for its needs when applying for the imposition and use of PFC revenue.

The reasons for adopting a standard eligibility level for PFC terminal development projects during the application process are two-fold. First, given the additional eligibility for terminal projects under the PFC Regulation, most PFC decisions approve a higher percentage of project costs than has been typical under AIP. Second, it is difficult for public agencies to accurately establish firm eligibility percentages when filing for PFC approval, since at that stage accurate dimensional information for projects may not have been determined.

4.2.3.2 Eligibility for Payments of Funds to Federal Agencies. General appropriation law forbids the payment of Federal funds from one Federal agency to another Federal agency unless specifically authorized by Congress (GAO Redbook, 2 GAO-RB pt. B, s. 3 (2004)). Accordingly, AIP grants may not be used for an otherwise eligible project if those funds will go to another Federal agency, as may take place when an airport must replace or demolish a facility owned by the Department of Defense. Because PFC funds are not Federal funds, their payment to Federal agencies for an otherwise eligible project is not completely barred. The payment of PFC funds to the Federal government is limited by the AIP eligibility requirements that would apply if the facility were not federally owned (*see* FAA Order 5100.38D). In all cases involving payments to Federal agencies, consultation with APP-510 and APP-501 is necessary (*see* AIP Handbook).

4.2.4 Project Objectives. The PFC Regulation (*see* 49 U.S.C. § 158.15) lists three objectives of which a project must meet at least one to be eligible for PFC funding. The public agency must use the Attachment B of its PFC application to explain how each project would meet at least one of the following objectives:

1. Preserve (not allow to lose functionality) or enhance (improve) safety, security, or capacity of the national air transportation system
2. Reduce noise or mitigate noise impacts resulting from operations at an airport, or
3. Furnish opportunities (typically add or reconfigure facilities) for enhanced competition between or among air carriers.

Economic development, promotion of tourism, or other non-aviation objectives do not fall under the three PFC objectives specified above and cannot be utilized as PFC objective. The PFC statute and regulation do not place any one PFC objective above another. If a project accomplishes any of the PFC objectives and is otherwise eligible for approval, the FAA must approve it. However, particularly in the case of a terminal development project (as defined above), the FAA encourages public agencies to explicitly address the project's contribution to enhancing competition at the airport as part of the air carrier competition discussion required under 14 CFR § 158.25(b)(7).

To implement the recommendations of the October 1999 FAA/DOT report ‘Airport Business Practices and Their Impact on Airline Competition,’ the FAA requires public agencies to demonstrate compliance with 14 CFR § 58.25(b)(7). Accordingly, public agencies must provide, as a part of the Attachment B for the project, a written description of existing constraints on competition at the airport, and how the PFC terminal development project (or some other planned development, regardless of the funding source) will remove the constraints. The public agency must quantify the terminal development project’s impact on the number of gates, ticket counters, baggage carousels, or other air carrier operations at the airport. The public agency must estimate the impact of the facilities to be built with PFC funds, those to be refurbished with PFC funds, and those to be demolished with PFC funds. It must also identify how many of these facilities will be allocated to new entrant or incumbent air carriers, and under what terms (e.g., preferential long-term lease, common use). If the PFC project enables the accommodation of a new entrant elsewhere at the airport (even if the project itself is allocated to an incumbent), the public agency must note that and quantify its impact. Finally, the public agency must specifically address how its compliance with the PFC assurances linked to PFC facility leasing will promote competition at its airport (*see* Appendix C).

- 4.2.5 **Significant Contribution.** For the FAA to approve a large or medium hub airport to impose and use PFC funds at a level higher than \$3.00, the FAA must determine that the project makes a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport per 49 U.S.C. § 40117(b)(4)(A) and 14 CFR § 158.17(b). This determination is made on a case by case basis in addition to the finding of adequate justification already required for all PFC projects. The FAA has interpreted the statutory provision to require the FAA to employ a higher justification standard for projects subject to the significant contribution test. The FAA has refined what constitutes a significant contribution through the approval process for individual PFC applications and in individual PFC decisions.

Because significant contribution is a higher approval standard than adequate justification, the public agency must submit substantial quantitative and qualitative information, documentation, and other evidence for the FAA to determine if the project meets this higher standard. Further guidance on significant contribution for specific types of projects is provided in Section 4.3.

Section 4.3 Project Review Criteria

4.3.1 **General.** This section provides instructions to determine a project's justification based on its eligibility, objective, and if appropriate, significant contribution. Direction on reviewing project costs is also provided. Projects can be approved within the following project types:

1. Safety projects
2. Security projects
3. Capacity projects
4. Ground access and inter-modal projects
5. Land acquisition projects
6. Navigational aid projects
7. Noise projects
8. Voluntary Airport Low Emissions VALE projects³⁴

4.3.2 **Safety Projects.** Safety projects must address 14 CFR Part 139 requirements such as firefighting vehicles and facilities (*see* 14 CFR § 139.317), a proposed runway incursion prevention measure (*see* 14 CFR § 139.329), or a Runway Safety Action Team recommendation. Safety projects are not automatically justified. The project must meet the eligibility and justification requirements outlined in the AIP Handbook. The FAA Airports office should consult FAA experts in determining if safety projects not covered by published guidance are adequately justified under the appropriate regulation.

When the FAA prescribes such safety projects, the public agency must cite the specific FAA requirement, which should be annotated to indicate the date and basis of the certification finding in the Attachment B.

Public agencies must include the age and condition of any safety equipment or facility being reconstructed or rehabilitated. The FAA expects that reconstruction and rehabilitation projects will extend the useful life of a facility by at least half.

FAA personnel should be consulted about any infrastructure project intended specifically to bring an airport into compliance with FAA design standards, especially if such project involves a large expenditure of funds to confirm that the project is reasonable and justified. A project intended to meet current FAA design standards is not automatically justified as a safety project, it may be more appropriately justified as a capacity project.

³⁴ See 49 U.S.C. § 40117(a)(3) and 14 CFR § 158.15(a).

Table 4-1. Safety Projects

For the following requirement...	The following criteria apply to safety projects
Eligibility	The safety project is eligible for PFC when it meets AIP eligibility requirements based on the latest edition of the AIP Handbook, FAA Order 5100.38
Objective (all projects)	The objective of a safety project is determined based on its eligibility or a finding by APP-510 that the project is eligible as a safety project. Safety projects include the minimum development or equipment that is required by Federal regulation, airport certification procedures, necessary for the safety of individuals or property at the airport, or design standards intended primarily for the protection of human life.
Objective (preservation of infrastructure)	The project must preserve the safe condition and functionality of airport infrastructure.
Objective (new or expanded infrastructure)	The project must enhance the safe condition and functionality of airport infrastructure.
Justification	Safety projects are not automatically justified. The justification of the safety project must be based on a demonstrated safety issue and the need for the facility based on existing or reasonably forecast operations. See AIP Handbook, FAA Order 5100.38 for additional justification requirements for safety projects.
Significant Contribution	<p>a. To meet the significant contribution standard, the Public Agency must demonstrate that loss or decommissioning of the facility would result in a quantifiable and significant (more than de minimis) operational impact, degradation of aviation safety or resulting congestion and delay based on existing or forecast activity levels.</p> <p style="text-align: center;">-or-</p> <p>b. To meet the significant contribution standard, the Public Agency must demonstrate that the project would result in a quantifiable and significant (more than de minimis) enhancement to aviation safety, based on a projected reduction of runway incursions, mitigation of runway excursion risks or demonstrable safety benefit.</p>

4.3.3 Security Projects. Security projects must address 49 CFR Part 1542 requirements as outlined in FAA Order 5100.38D (which establish the project's AIP eligibility). The public agency must cite the specific TSA requirement, and annotate the Attachment B to indicate the date and basis of the certification or security finding. Security projects must include a letter from the TSA's Facility Service Director in the application certifying that the project is in the airport's Security Plan and is the minimum necessary to meet 49 CFR Part 1542 requirements. The FAA Airports office must consult Transportation Security Agency (TSA) experts in determining if security equipment and projects not covered by published guidance are adequately justified under the appropriate regulation.

Public agencies must include the age and condition of security equipment or facility being reconstructed or rehabilitated. The FAA expects that reconstruction and rehabilitation projects will extend the useful life of a facility by at least half.

Table 4-2. Security Projects

For the following requirement...	The following criteria apply to security projects
Eligibility	<p>The security project is eligible for PFC when it meets AIP eligibility requirements based on the latest edition of the AIP Handbook, FAA Order 5100.38.</p> <p style="text-align: center;">-or-</p> <p>It meets the requirements of the Federal Aviation Reauthorization Act of 1996, Section 308 – Authority to Use Certain Funds for Airport Security Programs and Activities: “Notwithstanding any other provision of law, funds may be used for the improvement of facilities and the purchase and deployment of equipment to enhance and ensure the safety and security of passengers and other persons involved in air travel.” This includes grants made under AIP and application approvals made under the PFC program. The FAA has interpreted Section 308 to extend eligibility for some security equipment and facility projects that may not have been previously eligible under the AIP Handbook. However, other requirements, such as FAA standards for equipment design and for whether an airport qualifies for such equipment or facilities must be met for eligibility purposes. Therefore, if a public agency proposes a project that would not otherwise be eligible under the AIP Handbook or other federal guidance, the determination of whether the project is an eligible security project will be deferred to APP-510, after coordination with the appropriate TSA office.</p>
Objective (all projects)	The objective of a security project is determined based on its eligibility or a finding by APP-510 with the concurrence of TSA security personnel that is eligible as a security project.
Objective (preservation of infrastructure)	The project must preserve the security of airport infrastructure or the national air transportation system.
Objective (new or expanded infrastructure)	The project must enhance the security of airport infrastructure or the national air transportation system.
Justification	Security projects are not automatically justified. The justification for the security project must be based on the need to meet a specific requirement of 49 CFR Part 1542. Such projects are subject to the concurrence of the TSA as being necessary to meet Part 1542 standards.
Significant Contribution	To meet the significant contribution standard, a security project must be specifically required to meet 49 CFR Part 1542 requirements.

4.3.4 Capacity Projects. The public agency must provide a clear explanation of the capacity problem that is addressed by a proposed project and why existing capacity cannot meet

the existing demand or verifiable short term (five year) forecast demand.³⁵ The explanation must include a thorough description of the expected capacity benefits of a proposed project, as well as the opportunity cost of not implementing the project, in aircraft or passenger delays, increased waiting times, facility level of service, or other inefficiencies. An estimate of the types and number of passengers or aircraft operations that the proposed project will benefit, documented by research, analysis, or simulations needs to be included as part of the project explanation.

In addition, the public agency must show that the cost of the proposed capacity project is reasonable. Although the FAA cannot mandate the use of benefit cost analysis methodologies, such methodologies establish the reasonableness of a project and estimate a project's strengths and weaknesses. Similarly cost-effectiveness analysis can help compare the relative costs and outcomes of two or more alternatives.

The FAA must conclude that the capacity improvements attributable to a project are justified in proportion to the cost of the project. In some cases, the cost of a project may be so large as to raise reasonable questions about the value of the proposed capacity benefits. When this occurs, the FAA will give added attention to the comments from air carriers and the public that challenge the capacity benefits of the proposed capacity project.

The FAA can disapprove a proposed project, in whole or in part, if the FAA determines that alternative methods, particularly those used at the airport in the past and within the public agency's ability to implement in a timely manner, would accomplish the same capacity objectives at a lower cost. The FAA cannot require the implementation of a specified project or method to correct a capacity problem. Although it is recognized that capacity projects require a high level of justification because of their somewhat speculative nature, it is also important to recognize that the documentation and analysis of capacity projects will vary according to the level of complexity of the project.

Table 4-3. Airside Capacity Projects

For the following requirement...	The following criteria apply to airside capacity projects
Eligibility	<p>The airside capacity project is eligible for PFC when:</p> <ul style="list-style-type: none"> a. It meets AIP eligibility requirements based on the latest edition of the AIP Handbook, FAA Order 5100.38. <li style="text-align: center;">-or- b. It meets the eligibility requirements under FAA's Program to Permit Cost-Sharing of Air Traffic Modernization Projects. A project meeting the eligibility requirements for facilities and equipment under the FAA's Program to Permit Cost-Sharing of Air Traffic Modernization Projects (see 49 U.S.C. § 44517). This is a pilot program for cost sharing on air traffic modernization projects to encourage non-Federal investment in critical air

³⁵ In some cases it may be necessary to examine the demand over a longer timeframe, such as when the project implementation, including environmental analyses, will exceed this five year term.

For the following requirement...	The following criteria apply to airside capacity projects
	<p>traffic control facilities and equipment. PFC revenues may also be used as part of the public agency's local share for such projects. The Office of the Associate Administrator for Airports will select projects for the pilot program. Any FAA Airports office that receives an expression of interest from a public agency in obtaining PFC funding for a project under this pilot program must consult with APP-510.</p>
Objective (all projects)	<p>The objective of an airside capacity project is determined based on its eligibility or a finding by APP-510 that the project is eligible as an airside capacity project.</p>
Objective (preservation of infrastructure)	<p>The project must preserve the capacity of the airside infrastructure provided the facility is still needed based on existing or reasonably forecast operations.</p>
Objective (new or expanded infrastructure)	<p>The project must enhance the capacity of the airside infrastructure based on existing or reasonably forecast operations; and as depicted on an approved Airport Layout Plan (ALP). The enhanced capacity must benefit aircraft operators, aircraft passengers, airport employees, or other airport users.</p>
Justification	<p>An airside capacity project is justified when:</p> <ol style="list-style-type: none"> It is supported by information developed in the public agency's planning process; and It is consistent with FAA conclusions about capacity benefits in FAA-approved environmental determinations; and It is based on known demand or a forecast approved by FAA. Known demand must be documented in the form of established operations or a firm, written commitment by an air carrier to initiate such operations. The public agency's forecasts must be approved by the FAA before the submission of the PFC application; and If it is a large complex airside capacity project, it is supported by computer-based simulation models to estimate delay reduction (consult APP-510 to determine if the use of computer-based simulation is appropriate for a given large scale project). <p>Note: Airside reconstruction, rehabilitation, or overlay projects identified as preserving capacity must be justified in the same manner as for new projects. Public agencies must include the age, condition and enduring need of the current facility for projects involving an overlay of pavement or the reconstruction or rehabilitation of pavements, equipment, or other facilities.</p>
Significant Contribution	<p>An airside capacity project must make a significant contribution to reduce current or anticipated congestion or increase competition among air carriers. To meet the significant contribution standard, the Public Agency must:</p> <ol style="list-style-type: none"> Demonstrate the project has, or would, qualify for substantial Federal resources (a Letter of Intent or substantial AIP discretionary funding—i.e., greater than \$10 million). Projects that plan to reduce existing or expected congestion or alleviate a binding constraint on airport growth or service may use a variety of means to demonstrate that the significant contribution standard is met, including showing that: the project is approved, in part, for Letter of Intent funding with AIP grants; the project satisfies the FAA Airport

For the following requirement...	The following criteria apply to airside capacity projects
	<p>Benefit-Cost Analysis Guidance; or the project is identified in FAA capacity studies. Supporting documentation for establishing congestion must include quantitative and qualitative detail establishing the impact of the congestion or binding constraint on airport growth or service on passengers, airport employees, aircraft operations, or related criteria;</p> <p style="text-align: center;">-or-</p> <p>b. Projects involving the rehabilitation of runways and taxiways that have reached the end of their useful life might also meet the significant contribution standard. Rehabilitation of these projects would be necessary in order to prevent major structural repairs which would cause the runways or taxiways to be taken out of service for an extended period of time. In such a case, the public agency would have to demonstrate that without the rehabilitation project the airport would lose the use of the runway or taxiway and that the resulting delays would be unacceptable to the flying public.</p>

Table 4-4. Terminal Capacity Projects

For the following requirement...	The following criteria apply to terminal capacity projects
Eligibility	<p>A terminal capacity project is eligible for PFC when:</p> <p>a. It meets AIP eligibility requirements based on the latest edition of the AIP Handbook, FAA Order 5100.38. At large, medium, and small hub primary airports, terminal facilities directly related to the movement of passengers and baggage in air commerce within the airport boundaries that are not revenue-producing are eligible for AIP funding (i.e., multi-modal terminal facilities; public-use areas associated with baggage claim delivery; automated baggage handling equipment; public-use corridors to boarding areas; central waiting rooms; restrooms; holding areas not exclusively leased to an air carrier; foyers and entryways; loading bridges and flight information systems that are available for use by all air carriers).</p> <p>The PFC statute and regulation expand PFC eligibility for terminal projects within the airport boundaries to include non-concession areas directly related to the movement of passengers and baggage in air commerce regardless of their revenue-producing status. So gates, airline ticketing areas (the counter itself, non-exclusive ticketing kiosks, baggage check facilities, and outbound baggage handling facilities), and passenger check-in facilities are eligible for the use of PFC funds. Public seating for a food court is not eligible because the food court is a concession. The FAA Airports office must consult APP-510 to determine the eligibility of any items not covered above.</p> <p>PFC eligibility follows AIP eligibility at non-hub primary, non-primary commercial service, reliever airports, and airports participating in the Military Airport Program. This includes public use terminal space for gates, airline ticketing areas, passenger check-in areas, restaurants, car rental facilities, and other concessions are eligible regardless of their revenue-producing status.</p>

For the following requirement...	The following criteria apply to terminal capacity projects
	<p>In some cases, certain AIP-eligible items, such as AIP administrative costs or other costs strictly necessary to meet AIP requirements (but not PFC requirements) cannot be funded with PFC revenue.</p> <p style="text-align: center;">-or-</p> <p>b. A project for constructing gates and related areas at which passengers board or exit aircraft is eligible for PFC funding if the project enables additional air service by an air carrier with less than 50 percent of the annual passenger boardings at the airport. Such projects may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate (see AIR-21)</p> <p>The changes made by AIR-21 provide for a limited expansion of PFC eligibility to facilities in the general vicinity of aircraft gates, associated hold-rooms, and ticket counters (Pub. L. 106-181, Sec. 151). These changes are limited to the specific items noted above (commonly referred to as "shell-of-a-gate"). The provision allows for the basic construction of otherwise ineligible facilities such as air carrier or airport operation space, concession space, and aircraft refueling facilities directly adjacent to, or under, a gate, its associated hold-room or ticket counter. The improvements cannot include tenant finishes, restaurants, car rental or automobile parking facilities.</p> <p style="text-align: center;">-or-</p> <p>c. For terminal projects described in section 49 U.S.C. 47110(d) that incurred before 1990 but after August 1, 1986 at an airport that: (1) did not have more than 0.25 percent of the total annual passenger boardings in the United States in the most recent calendar year for which data are available, and (2) where total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997 (49 U.S.C. § 40117(a)(3(C))).</p>
Objective (all projects)	The objective of a terminal capacity project is determined based on its eligibility or a finding by APP-510 that the project is eligible as a terminal capacity project.
Objective (preservation of infrastructure)	The project must preserve the capacity of passenger terminal infrastructure provided the facility is still required based on existing or reasonably forecast operations. Terminal rehabilitation projects, including projects to make facilities compliant with the American Disability Act, to upgrade utilities, or to rehabilitate common-use corridors must demonstrate that the project will preserve needed capacity.
Objective (new or expanded infrastructure)	<p>The project must enhance the capacity of passenger terminal infrastructure by reducing delay or enhancing competition based on existing or reasonably forecast demand. The terminal capacity project must:</p> <p>a. Reduce delay. Terminal expansion projects are primarily intended to reduce airport related delay. Terminal delay reduction must benefit aircraft operators, aircraft passengers, airport employees, or other airport users.</p>

For the following requirement...	The following criteria apply to terminal capacity projects
	<p style="text-align: center;">-or-</p> <p>b. Enhance Competition. Most projects intended to enhance competition between or among air carriers are terminal development projects, although other types of projects may meet this objective as well. The FAA considers terminal development projects to include any new construction, rehabilitation, or demolition that directly affects the accommodation of air carriers at an airport. The public agency must address such competition in its application for any terminal development project that affects gates, ticket counters, baggage carousels, or other air carrier operations;</p> <p style="text-align: center;">-or-</p> <p>c. Rehabilitate terminal facilities. Terminal rehabilitation projects, including projects to make facilities compliant with the American Disability Act, to upgrade utilities, or to rehabilitate common-use corridors, can be considered when it can be demonstrated that the project will needed preserve capacity.</p>
Justification	<p>A terminal capacity project is justified when:</p> <p>a. The rehabilitation of a portion of a terminal, the replacement of a terminal, or renovations to a terminal, where no additional gates or concourses are being constructed, would be justified because of the continued need for the facility as well as the age, condition, or functional inadequacy of the existing facility.</p> <p style="text-align: center;">-or-</p> <p>b. New terminals, gates, or concourses must be justified by documented existing demand or on a short-term forecast of future demand.</p> <p style="text-align: center;">-or-</p> <p>c. An eligible terminal project may make reasonable accommodation for growth, considering such factors as economies of scale, local economic and near-term passenger growth or a preference to limit construction disruptions at a rapidly growing airport. In some cases, it may be necessary to examine demand over a longer time frame.</p> <p style="text-align: center;">-or-</p> <p>d. The impact of a terminal project on competition at an airport must be addressed in the terminal project description and as part of the project justification, even if the project is to be undertaken solely for the purpose of capacity preservation or enhancement of another non-competition objective.</p>
Significant Contribution	<p>A terminal capacity project must make a significant contribution to reduce current or anticipated congestion or increase competition among air carriers. To meet the significant contribution standard, the Public Agency must:</p> <p>a. Demonstrate that the project reduces current or anticipated congestion by alleviating a binding constraint on airport growth or service. Supporting documentation for establishing congestion must include quantitative and qualitative detail establishing the impact of the congestion on passengers, airport employees, aircraft operations, or related criteria.</p> <p style="text-align: center;">-or-</p>

For the following requirement...	The following criteria apply to terminal capacity projects
	<p>a. Demonstrate that the project removes a major barrier to increased airline competition at the airport or reduce its impact. For example, increasing the number of new operations that the project will allow, increasing the number of new entrant airlines it will accommodate, reducing fares at the airport, and/or other measures of increased competition. Projects that meet this standard include any project that is an essential component of a competition plan or is part of competition discussion as required under 14 CFR § Part 158.25(b)(7).</p> <p style="text-align: center;">-or-</p> <p>b. Demonstrate that the project involves the rehabilitation of critical terminal facilities that have reached the end of their useful life. Rehabilitation of these facilities would be necessary in order to prevent major structural repairs which would cause the terminal to be taken out of service for an extended period of time and result in significant delays. In such a case, the public agency would have to demonstrate that without the rehabilitation project the airport would lose the use of the facilities resulting in delays unacceptable to the flying public.</p>

4.3.5 Ground Access and Inter-Modal Projects. Airport ground access projects³⁶ must be for the exclusive use of airport patrons and airport employees, be constructed on airport-owned land or rights-of-way acquired or controlled by the public agency, and be connected to the nearest public access facility or point of sufficient capacity. More than one access facility or connection point may be eligible if the airport traffic is of sufficient volume. The FAA recommends that public agencies interested in applying to impose and use PFC funds for access projects, and particularly inter-modal projects, refer to the FAA's policy on the eligibility of airport ground access projects for PFC financial participation (69 Fed. R. 6366, Feb. 10, 2004).

In some cases, a state or local government agency (other than the public agency) may condition its approval of an airport terminal or airside project on the public agency providing additional airport ground access. To be eligible for PFC funding, that airport ground access project would have to be, on its own merits, AIP-eligible, satisfy one or more of the PFC objectives, and conform to the other requirements of the PFC statute and regulation. The eligibility of that access project cannot be assumed because the terminal or airside project is eligible and because the construction of these projects has been conditioned on the construction of the access project.

An intermodal airport ground access project (especially a rail or fixed guideway system) often involves complex issues of national policy and may be viewed as precedent-setting

³⁶ On May 3, 2016, FAA published Notice of Proposed Policy Amendment and Request for Public Comments related to the PFC Program, Eligibility of Ground Access Projects Meeting Certain Criteria. 81 Fed. R. 26611. Historically, FAA has evaluated rail access projects using the same criteria applied to access roads. This proposed policy would change that historical practice and permit the use of PFCs for certain rail access projects that may not be for the exclusive use of airport users. Should FAA finalize this proposed policy, this Order will be updated accordingly.

for future projects. Accordingly, intermodal project decisions are not, as a matter of policy, delegated to the FAA Regions. Coordination with APP-501 and APP-510 regarding eligibility is required on any inter-modal or multi-modal project. In general, the FAA will work in cooperation with the Federal Transit Administration to evaluate the justification of intermodal projects and will rely on earlier FAA decisions. The FAA encourages public agencies to contact their FAA Airports office early in planning intermodal projects to identify a mutually acceptable approach to establishing adequate justification.

Table 4-5. Ground Access and Intermodal Projects

For the following requirement...	The following criteria apply to ground access and intermodal projects
Eligibility	The FAA determines the eligibility of and justification for all ground access projects (whether road, heavy or light rail, or water) on a case-by-case basis after a review of each proposal. In general, for an airport access project to be eligible for PFC funding it must be eligible for AIP funding.
Objective (all projects)	The objective of a ground access or intermodal project is determined based on its eligibility or a finding by APP-510 that the project is eligible as a ground access or intermodal project.
Objective (preservation of infrastructure)	The project must preserve the capacity of airport ground access and intermodal infrastructure provided the facility is still required based on existing or reasonably forecast operations.
Objective (new or expanded infrastructure)	The project must enhance the capacity of airport ground access and intermodal infrastructure by reducing delay or enhancing competition between or among air carriers (although not common, can be a valid objective) based on existing or reasonably forecast demand.
Justification	<p>A ground access or intermodal capacity project is justified when an airport ground access project can be justified by demonstrating that the project will either alleviate a ground access constraint that is impeding the use of the airport by air passengers or by demonstrating that a project will reduce the ground access time to the airport.</p> <p>If a project is justified by demonstrating that it alleviates a ground access constraint, the public agency can demonstrate that the use of the airport is, or will be, substantially less as a result of the constraint. For very costly projects, it is critical to document the effect of the constraint.</p> <p>If a project is justified by showing that it will reduce ground access time, the public agency must demonstrate that the reduced travel time (either for air passengers using the project or for all air passengers who benefit from less congested roadways) is reasonable relative to the cost of the project.</p> <p>Note: The justification of new or enlarged roads can usually be supported by the results of a traffic study. The traffic study can demonstrate the impact of the project in reducing roadway congestion and trip times to the airport. Alternatively, a public agency may consider conducting a benefit cost analysis of the proposed project.</p>
Significant Contribution	To meet the significant contribution standard, a ground access or intermodal capacity project will be approved on a case by case basis by the FAA Office of

For the following requirement...	The following criteria apply to ground access and intermodal projects
	<p>Airport Planning and Programming (APP-1).</p> <p>Factors and considerations supporting a favorable significant contribution determination include:</p> <ul style="list-style-type: none"> a. A project that substantially changes how people get to and through the airport by providing a new form of access from the community to the airport. b. A project that significantly reduces delay in accessing flights by passengers by removing obstacles to access. c. An integrated project that provides access to both off-airport and between on-airport facilities <p>Factors that are less likely to support a favorable significant contribution determination may include:</p> <ul style="list-style-type: none"> a. A project that simply shifts a capacity bottleneck from one part of the airport to another. b. A project that does not allow for additional types of access to the airport. c. A project that has limited utility by only providing for a short-term or minimal increase in throughput for the airport.

4.3.6 Land Acquisition Projects. The public agency must demonstrate a valid aeronautical need for the land with planning documents and studies, existing Exhibit A documents, and other planning and forecasting tools.

Table 4-6. Land Acquisition Projects

For the following requirement...	The following criteria apply to land acquisition projects
Eligibility	A land acquisition project is eligible for PFC when it meets AIP eligibility requirements based on the latest edition of the AIP Handbook, FAA Order 5100.38.
Objective (all projects)	<p>The objective of a land acquisition project is based on the objective of its associated safety, security, capacity or noise project. The associated project requiring the land acquisition must either:</p> <ul style="list-style-type: none"> a. Preserve or enhance airport infrastructure; b. Reduce noise or mitigate noise impacts resulting from operations at an airport; or c. Enhanced competition between or among air carriers.
Justification	A land acquisition project is justified by the requirements of its associated safety, security, capacity or noise project.
Significant Contribution	A land acquisition project meets the significant contribution standard when its associated safety, security, capacity or noise project meets the significant contribution standard.

- 4.3.7 Navigational Aid Projects.** A navigational aid is any visual or electronic device airborne or on the surface which provides point-to-point guidance information or position data to aircraft in flight. All navigational aids must directly communicate with pilots, rather than directly communicate with the air traffic control tower, in order to be considered eligible. This is because equipment that communicates with the air traffic control tower is funded through the FAA Air Traffic Organization (ATO)'s budget. A possible exception would be projects found eligible under the FAA's Program to Permit Cost-Sharing of Air Traffic Modernization Projects.

Table 4-7. Navigational Aid Projects

For the following requirement...	The following criteria apply to navigational aid projects
Eligibility	<p>A navigational aid project is eligible for PFC when:</p> <ul style="list-style-type: none"> a. It meets AIP eligibility requirements based on the latest edition of the AIP Handbook, FAA Order 5100.38. <p style="text-align: center;">-or-</p> <ul style="list-style-type: none"> b. It meets the eligibility requirements under FAA's Program to Permit Cost-Sharing of Air Traffic Modernization Projects. A project meeting the eligibility requirements for facilities and equipment under the FAA's Program to Permit Cost-Sharing of Air Traffic Modernization Projects (see 49 U.S.C. § 44517). This is a pilot program for cost sharing on air traffic modernization projects to encourage non-Federal investment in critical air traffic control facilities and equipment. PFC revenues may also be used as part of the public agency's local share for such projects. The Office of the Associate Administrator for Airports will select projects for the pilot program. Any FAA Airports office that receives an expression of interest from a public agency in obtaining PFC funding for a project under this pilot program must consult with APP-510.
Objective (all projects)	<p>The objective of a navigational aid project is determined based on its eligibility if it is a standalone project, or based on the objective of its parent safety, security, capacity or noise project. The standalone or parent project requiring the navigational aid must either:</p> <ul style="list-style-type: none"> a. Preserve or enhance airport infrastructure; b. Reduce noise or mitigate noise impacts resulting from operations at an airport; or c. Enhanced competition between or among air carriers.
Justification	<p>A navigational aid project is justified when the aid can be justified by the requirements of the parent project, or if a standalone project, based on its AIP eligibility and its PFC objective.</p>
Significant Contribution	<p>To meet the significant contribution standard, a navigational aid project must meet the significant contribution standard of its parent safety, security, capacity or noise project.</p>

4.3.8 Noise Projects. A noise compatibility project (also referred to as a noise mitigation project) must meet very specific justification and eligibility requirements listed below.

Table 4-8. Noise Projects

For the following requirement...	The following criteria apply to noise projects
<p>Eligibility</p>	<p>A noise project is eligible for PFC when:</p> <ul style="list-style-type: none"> a. It meets AIP eligibility requirements based on the latest edition of the AIP Handbook, FAA Order 5100.38 (except that the project need not be included in an approved Part 150 NCP as is required for AIP eligibility). <li style="text-align: center;">-or- b. The noise project is not in an approved Part 150 NCP, but it is supported by current noise contours, which might be prepared in conjunction with a non-completed Part 150 study, airport master plan, environmental assessment, environmental impact statement, or other suitable planning analysis. <li style="text-align: center;">-or- c. The noise project is at a place of worship and public building used primarily for educational or medical purposes, even if the associated airport does not participate in the Part 150 program. <li style="text-align: center;">-or- d. The noise project is identified in an approved environmental document to mitigate the noise impacts of an airport infrastructure project. However, its eligibility must be established based on the eligibility of the infrastructure project (e.g., capacity) and not by general noise mitigation criteria. <p>Note: Costs related to the development of new flight procedures, operational and administrative costs of an airport for ongoing noise mitigation programs, and demonstration programs to test the effectiveness of new noise mitigation technology are eligible for PFC funding even if the projects are included in an approved Part 150 NCP.</p>
<p>Objective (all projects)</p>	<p>The objective of a noise project is to state how the project will reduce noise or mitigate noise impacts resulting from operations at an airport. Projects intended to mitigate existing noise impacts or promote compatible land uses do not have to be part of an approved Part 150 NCP. However, they must be supported by studies of noise contours or other analyses that show that noise mitigation is required and that the proposed project will achieve those reductions.</p>
<p>Justification</p>	<p>A noise project is justified when:</p> <ul style="list-style-type: none"> a. The noise mitigation project is included in 14 CFR Part 150, Noise Compatibility Programs (NCP) are considered to be adequately justified, although concerns about the project raised during the consultation and (if needed) Federal Register comment processes must be fully addressed. <li style="text-align: center;">-or- b. If a project is not in a Part 150 NCP, the public agency must demonstrate, with land use noise planning documents, environmental analysis, or other published planning documents, that the project would qualify for inclusion in a Part 150 NCP. When this happens, the FAA PFC analyst must consult

For the following requirement...	The following criteria apply to noise projects
	with FAA environmental personnel familiar with the airport in question to determine if the inclusion criteria will be met.
Significant Contribution	To meet the significant contribution standard, a noise project must reduce noise impacts within a noise impacted area around an airport. The project must meet the criteria for inclusion in a Part 150 NCP, but it does not have to be actually included in an approved Part 150 NCP. If the project is not included in an approved Part 150 NCP, or a Part 150 NCP that has not been updated in at least 10 years, the project must be at least included in a land use compatibility plan prepared by a local jurisdiction surrounding a medium or large hub airport. AIP eligibility of the latter requires an extension of the September 30, 2015 sunset provision established per 49 U.S.C. § 47141(f).

4.3.9 Voluntary Airport Low Emissions VALE Projects. If the airport is in an air quality nonattainment area, or an eligible maintenance area, PFC funding is eligible for projects that result in the airport receiving appropriate emission credits as described in 49 U.S.C. § 47139, including the following:

1. A project for converting vehicles eligible under 14 CFR § 158.15(b) and ground support equipment powered by a diesel or gasoline engine, for use at a commercial service airport, to low-emission technology certified or verified by the Environmental Protection Agency to reduce emissions or to use cleaner burning conventional fuels; or
2. A project to acquire, for use at a commercial service airport, vehicles eligible under 14 CFR § 158.15(b)(1) and, subject to 14 CFR § 158.13(c), ground support equipment that use low-emission technology or cleaner burning fuels.

4.3.10 Debt Service Financing for Eligible Projects. Debt service expenses associated with approved projects are eligible for PFC funding, providing the projects financed meet PFC and AIP eligibility requirements (*see* Paragraph 5.3.4.1.6).

4.3.11 Debt Service for Otherwise Ineligible Projects. Vision 100 (Pub. L. 108-176, Sec. 122) permits PFC revenue to be used to make payments for debt service on debt incurred to carry out a project that is not an eligible airport-related project if the FAA determines that such use is necessary because of the financial need of the airport.

The review process for applications for debt service on otherwise ineligible projects will include a careful examination of the financial situation of each public agency applicant. If a public agency has prepared a financial prospectus that demonstrates its financial needs, or a financial recovery plan that identifies all available resources, the FAA encourages it to submit these documents with its PFC application.

The public agency may also include the following information, which will be important in the FAA's evaluation of the public agency's financial need, in its PFC application:

1. Evidence of a change in passenger enplanements for a carrier or carriers.
2. Documentation of negative actions taken on the public agency's bond rating.
3. Discussion of the inability of the public agency to meet bond payments and associated requirements.
4. Discussion of alternative sources of revenue available to the public agency, such as grant funds, state funds, concession revenue, and revenue from carriers serving the airport.
5. In the case of concession and carrier revenue, discussion of the impact of any increases to the rate base or landing fees as a result of the loss of revenue from a change in economic circumstances at the airport, such as the financial troubles or bankruptcy of a carrier or carriers.
6. Discussion of actions taken by the public agency to reduce its costs, including operational changes, personnel actions, or capital project deferment.
7. Any other information that the public agency believes will demonstrate the financial difficulties of the airport.

4.3.12 **Administrative Costs.** PFC revenues may fund reasonable and necessary costs for the administration of the public agency's PFC program (*see* 14 CFR § 158.13(b) and Paragraph 5.3.4.1.3).

4.3.13 **Project Cost Information and Reasonableness.** The public agency must submit detailed cost information on a proposed project so the FAA may evaluate the reasonableness of those costs, the appropriate duration of the collection of the PFCs, and the overall financial adequacy of the proposed project. Allowable costs are defined in the PFC Regulation and this Order as the reasonable and necessary costs of carrying out an approved project including those costs incurred on or after November 5, 1990. Costs of terminal development incurred after August 1, 1986, at an airport that did not have more than .25 percent of the total annual passenger boardings in the U.S. in the most recent calendar year for which data is available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997 are allowable (*see* 49 U.S.C. § 40117(a)(3)(c)).

4.3.13.1 **Detailed Cost Information.** The FAA must determine whether the amount of PFC revenue to be collected (and the duration its collection) will not result in revenue (including interest and other returns on revenue) that is more than that needed to finance each proposed project. For most projects, the FAA's review must confirm and document that project costs were considered before the project amount was recommended for approval. For large and costly projects, or where comments have claimed that a public agency's cost estimate is too high, the public agency may be required to provide additional documentation to support a cost determination. If a public agency states that some of the funding for a project is from a source other than the FAA or its own funds

(such as another Federal program or State funding), it must indicate the status of those funds (i.e., whether they are planned or requested, anticipated or actually awarded or otherwise committed). When such funding is not yet committed, the public agency must provide an alternative funding plan for the project.

A Court decision in 2003³⁷ specifically requires the FAA make an explicit finding that the amount of PFC review to be collected will not result in revenue that is more than needed to finance the proposed project, and that this finding must be explained and supported in the record.

In response to the Court's decision, the FAA initially issued guidance in 2006 requiring detailed cost information for projects that proposed PFC funding of more than \$10 million. Based on 10 ensuing years of administering the PFC program (and the types and scale of projects where issues have been found), the FAA has carefully considered the types of projects that truly warrant more detailed cost estimates. The FAA has determined that it is time to replace this "one-size-fits-all" approach with one that considers the type and nature of the projects being funded with PFCs, including project complexity, economies of scale and associated considerations.

For example, new runway construction involves relatively few major components compared to a new passenger terminal, but involves massive quantities of concrete or asphalt, mass grading and drainage systems, cabling and lighting systems, etc., virtually all of which would normally be eligible (as long as the overall project is justified). Based on the FAA's experience, a new runway would need to be on the order of \$100 million or more before it would warrant detailed cost data, whereas a terminal project involves many more systems and components and also has much greater potential to include ineligible spaces or equipment. Therefore, FAA has determined that a terminal project in excess of \$25 million needs to be supported with additional cost detail to enable a more comprehensive review. By contrast, an equipment-only acquisition—such as Aircraft Rescue and Firefighting (ARFF) or Snow Removal Equipment (SRE) may be problematic if they do not meet FAA specifications, and as a result FAA has determined that \$5 million is a more appropriate threshold for equipment-only projects. For all other project types, in light of how airport construction costs have changed over the last 10 years, we have raised the threshold from \$10 million to \$15 million.

Accordingly, the following table indicates a new set of thresholds delineated by project type:

³⁷ *Village of Bensenville, et al. v. Federal Aviation Administration*, 376 F.3d 1114, 1122 (D.C. Cir. 2004)

Table 4-9. Detailed Cost Requirement Threshold

Project Type	Threshold
Runway, taxiway or apron project	Project with costs in excess of \$100 million
Terminal facilities	Projects with costs in excess of \$25 million
Equipment acquisition	Projects with costs in excess of \$5 million
All other project types	Projects with costs in excess of \$15 million

The FAA may require that the public agency provide detailed cost information for projects below the established threshold in certain circumstances. For example, additional cost information may be required if the carriers or the public submit comments that question the public agency's costs. Detailed cost information may also help the FAA answer questions that come up during its review. The FAA's authority for requiring public agencies to submit detailed cost information is found in §158.25(b)(16) which states that the public agency must provide "Such additional information as the Administrator may require," in the application.

When detailed cost information is required or requested, the FAA's expects that the public agency will be able to use existing or otherwise readily available information to provide the detailed cost information, including (but not limited to) comparisons against directly comparable projects that have already been competitively bid. Ordinarily, the FAA would not expect the public agency to create new cost documents or analyses to meet this requirement or request.

Detailed cost information must, at a minimum, provide details on the cost of each major project component. The public agency must identify the sources of the cost information, such as planning studies, conceptual designs, construction designs, contracts, appraisals, or actual costs. This detailed cost information must consist of the documents the public agency used to determine the costs shown in its Attachment B.

The FAA recognizes that providing detailed cost information for terminal projects, which are typically greater than \$25 million, can be problematic. Under new instructions for terminal eligibility in this Order, the public agency may assume that up to 65 percent of the terminal project's costs are eligible. Therefore, the public agency may provide detailed cost information that addresses the overall cost of the terminal project, rather than allocating the costs to eligible and ineligible elements of the project. However, the project and application must not be closed until accurate cost information is provided to the FAA so it can establish the final eligible cost, in accordance with PFC statutory and regulatory requirements. The final cost, and therefore the final eligible amount, may ultimately be greater or less than 65 percent.

In certain circumstances a public agency may use an independent cost estimator to review the proposed project and be reimbursed to the extent that FAA determines that the cost for this service is reasonable. This practice should be limited to those cases where the costs are highly uncertain and project costs could change substantially if the public agency's estimates are inaccurate. However, even where the public agency obtains independent cost estimates, the FAA must evaluate the reasonableness of those cost estimates.

- 4.3.13.2 **Reasonableness of Costs.** A review block marked “for FAA use,” which is located at the end of the Attachment B, states that the FAA reviewer has examined the cost information for the project and has concluded that the amount approved is reasonable and will not result in the collection of excess PFC revenues. Such a finding must be based on the analysis of the information supplied by the public agency and the reviewer's knowledge of and experience with airport projects. The review block also includes a comment area where the reviewer must indicate if the approved amount is different from the amount requested and, if so, the reason that an amount other than that requested is being approved. This statement is required for all projects, not just those above the threshold for detailed cost estimates in order to meet the statutory requirement. However, for projects under the threshold for detailed cost estimates, detailed basis of cost information is not generally required for the FAA reviewer to complete the review block. In these cases, the FAA reviewer would be able to rely on the same considerations that he or she would use to approve an estimated cost for a comparable AIP-funded project.

Each Attachment B form must be signed by the FAA official who actually reviewed the basis of cost information and determined that the request is reasonable and will not result in the collection excess PFC revenues. That may mean that the various Attachment B cost statements in an application will be signed by different reviewing officials. For example, the Airports District Office (ADO) planner may review the scope and cost of a master plan or environmental assessment and will sign as the reviewing official for that project. Similarly, a project manager or engineer may review a runway rehabilitation project and sign for that project. Conversely, if an ADO operates under the “generalist” concept, one qualified person may in fact review all projects and therefore sign all the Attachment B forms.

The duration of the collection of PFCs for the application is specified in the Application Recommendation form. The statement of the specification will be signed by the person in the ADO or RO who calculated the PFC amount approved and determined the duration of collection. This FAA representative may be different from the person or persons who reviewed the costs of individual project. With limited exceptions noted later, when determining the duration of collection for PFC projects, the FAA cannot approve a duration that is longer than that requested by the public agency.

4.3.13.3 **Viability of Financial Plan.** Before the FAA can approve a PFC project, the FAA must be able to see the entire capital financial plan for the project. The financial plan for each project must include the following items:

1. The estimated allowable costs of each project
2. The expected PFC revenues to be used to finance the capital cost of the project, broken out by pay-as-you-go and bond capital, as applicable
3. The PFC revenues needed for bond financing and interest costs, including coverage, for each project, existing and expected AIP entitlement and discretionary funds
4. The sources and amounts of other funds, if any, to be used to finance each project
5. An alternative funding plan to replace any requested AIP discretionary funds
6. Estimated total project cost

Public agencies may include future AIP entitlement grant funds in their financial plans. For large and medium hub airports, the required AIP entitlement reduction for airports that impose PFCs must be acknowledged in their forecasts of future AIP entitlement grant funds. Public agencies must include any current Letter of Intent funding schedules (discretionary and entitlement) in their financial plan. Public agencies may include future discretionary AIP funds in their financial plan, but must have a viable alternate plan to fund their projects in case such discretionary funds are not available. The approval of a PFC application is not a commitment of future AIP discretionary funds by the FAA, which should be specifically stated in any project determination where discretionary funds are shown as part of the financial plan. The FAA Airports office must address the viability and reasonableness of any proposed AIP funding to support the PFC application in its review of the Attachment B.

This financial information for each project is used to determine that the total revenue and duration of the PFC will not result in the collection of revenues that exceed the amount necessary to finance the approved projects. The financial information also ensures that approved projects will be completed using the available financial resources.

In reviewing the financial information, the FAA will assess the public agency's commitments that may impact the ability to commit specific sources of funds, including other higher priority projects that may require use of entitlement funds. However, the FAA's evaluation will generally focus primarily on the PFC project. Under extraordinary circumstances, the FAA may evaluate the broader capital program of the airport or public agency.

The FAA will not generally evaluate the impact of increased airport rates and charges, and particularly landing fee projections, on the public agency's ability to attract or retain airline service, which is driven by many factors including underlying market strength, the competitive environment, revenue potential and other airline operating expenses beyond airport rates and charges. The FAA will not generally consider current or projected Cost Per Enplanement ("CPE") or landing fee projections as a means of comparing one airport to another. CPE is highly dependent upon a number of factors, including the ownership and operation of passenger terminals, the nature of each airport's use and lease agreement, and the structure of each airport's rates and charges.

- 4.3.14 **ALP, Airspace and NEPA Requirements.** For all PFC projects, the requirements of airport layout plans (ALP), airspace, and the National Environmental Policy Act (NEPA) (Pub. L. 91-190, Jan. 1, 1970, as amended and recodified at 42 U.S.C. § 4321 *et seq.*) must be met before the application (for use approval) is found substantially complete. The FAA reviewer will determine if each proposed project is on the approved ALP and that the airspace and environmental determinations have been completed and are favorable. This determination will be based, in part, on the dates included in the Attachment B. If the FAA cannot verify that the ALP, airspace, and NEPA requirements have been met, the FAA must contact the public agency to verify that the requirements have been met.

The FAA Airports office must identify any projects that do not meet these requirements as soon as possible so the public agency can obtain the necessary approvals, delete the project, or choose not to provide supplementary information. If the public agency opts to retain the deficient project in the application and declines the opportunity to supplement the application, the FAA must publish a *Federal Register* notice stating that the application is not substantially complete and describe the deficiencies. In some cases, it may be possible for the public agency to request that projects not meeting the requirements for airspace, ALP, and NEPA be approved only to impose a PFC, but these projects must still meet all criteria for impose-only projects, including the requirement for alternative projects.

- 4.3.15 **AIP Funding Test.** The FAA is required to determine that the costs for projects for which a PFC of \$4.00 or \$4.50 is requested cannot be paid for from funds reasonably expected to be available for AIP-funded programs (49 U.S.C. § 40117(b)(4)(B)). The FAA must therefore carefully assess the future AIP and PFC funding in the airport's capital improvement program (CIP). This provision requires that both the public agency and the FAA understand the needs of the airport and the most appropriate funding type to address those needs. Certain types of projects compete well for AIP funding (such as safety and security projects) whereas others do not compete as well or are limited to the subcategories of AIP funding that can be provided (such as passenger terminals depending upon the size classification of the airport). Public agencies should focus their requests for federal funds toward high priority projects (primarily airfield), while using PFCs and local funds to meet the remaining needs of the airport. Public agencies should

also be mindful that the airside needs test that requires the public agency to demonstrate it has made adequate provisions for financing its airside needs (49 U.S.C. § 40117(d)(4)).

4.3.15.1 Cases Where a Public Agency Has an Approved PFC Decision, but Then Wishes to k AIP funding for One or More Projects.

The FAA makes a series of specific findings and determinations when approving a PFC application, and those findings represent a federal decision to approve the use of PFC funds for a particular project. Ordinarily, once the FAA has approved a PFC application, the FAA will not depart from that determination by subsequently considering AIP funding for the same project.

In recent years, some airport sponsors have submitted PFC applications covering the entire estimated cost of a given project, and then subsequently requested one or more AIP grants for the same project. In such cases, the sponsor usually intends to amend the PFC application downward if and when an AIP grant is awarded, retaining sufficient PFC authority to cover the local share of the grant.

While this practice is understandable from the sponsor's perspective for financial flexibility purposes, it runs contrary to the intent of both AIP and PFC processes. This is in part because the FAA cannot award a grant for costs that have already been funded and partly because of the statutory requirement at §40117(d)(1), that "the amount and duration of the proposed passenger facility charge will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project."

4.3.15.2 Considerations and Limitations on Subsequent AIP Funding of PFC Approved Projects.

A project should not be included in a PFC application if the public agency anticipates an AIP grant for the same project; unless the PFC funds will be used specifically for the local share of the AIP grant. However, a PFC application can include a project(s) for which an AIP grant is anticipated if the FAA has already issued an AIP Letter of Intent (LOI) that includes the same project(s). In such cases, the PFC application must specify that PFC funds will be used as an interim funding source until the scheduled AIP grants included in the LOI are issued. If a PFC application is approved that includes a project(s) ultimately funded with an AIP grant, aside from the funding for the local share of the grant, the public agency must submit a request to amend the PFC application accordingly within 90 calendar days of the AIP grant award. Furthermore, the public agency should not make expenditures under the AIP grant until the PFC amendment has been approved.

4.3.16 Airside Needs Test. The FAA Airports office is required to determine, in the case of an eligible surface transportation or terminal project, that the public agency has made

adequate provision for financing the airside needs of the airport (including runways, taxiways, aprons, and aircraft gates) before the FAA can approve a PFC level above \$3 for a non-airside project (49 U.S.C. § 40117(d)(4)).

The FAA Airports office must be satisfied that there are no unmet airside needs that the public agency cannot reasonably expect to fund through its available financial resources, including airport rates and charges, state or local grants, PFCs, AIP grants, or other airport revenues.³⁸ However, the FAA must draw its own conclusions with due consideration of a reasonable planning horizon that is related to the period of time for which the airport proposes to commit its available PFCs. A public agency must submit a thorough financial plan, beyond the minimum requirements of a basic CIP, for the FAA to review, especially in those cases where it proposes multiple funding sources. A public agency must also provide information in its financial plan that demonstrates how it will fund its airside needs if the FAA is unable to provide AIP discretionary funds at the level for which the public agency is hoping. An overreliance on AIP discretionary funds may influence the FAA's determination that the public agency has made adequate provision for financing the airport's airside needs, and could lead to the approval of a PFC collection level below that requested by the public agency.³⁹

The public agency must demonstrate that it has a viable plan in place to fund its reasonably anticipated airside needs. In the short term, the public agency should use its Capital Improvement Plan (CIP) to demonstrate its airside needs and proposed funding. However, many PFC collection periods extend beyond the CIP's timeframe, some as much as 20 or more years into the future. When these extended periods are the case, the FAA needs to assess the airport's plan for funding the airside needs over the collection timeframe—either by preserving future PFC funds or demonstrating that other funding sources will be available, without over-reliance upon AIP Discretionary funds. Such a plan may be linked to a longer-range planning document such as a master plan, may rely on longer range NPIAS projections, may be linked to pavement condition assessments provided to the FAA, or any of the three. In its analysis, the FAA will verify the public agency's projections are reasonable and are consistent with the public agency's available financial resources. Airports must recognize and plan for that fact that runways and taxiways almost inevitably require periodic rehabilitation, resurfacing or reconstruction, and the airport must make reasonable estimates regarding the timing and frequency of such project needs over the life of the proposed PFC collection period.

The public agency should consider all available financial resources, not just federal and federally regulated funding. This may entail demonstrating that the airline use and lease agreement includes provisions to ensure that crucial airside needs are either pre-approved or will not be delayed due to disagreements between the airport and airlines, including periodic runway and taxiway reconstruction or rehabilitation projects, during the proposed PFC collection period. The FAA Airports office must draw its own conclusion

³⁸ Unmet airside needs applies to all airports under the public agency's control for which the public agency is collecting PFCs.

³⁹ Policy discussions to further improve the methods by which we conduct an airside needs assessment are continuing.

as to whether the application meets the airside needs in the Attachment B for each surface transportation or terminal project proposed for a PFC level above \$3.

4.3.17 Implementation and Completion Schedule. Public agencies that collect and use PFCs must maintain adequate progress toward the implementation and completion of approved projects. The PFC Regulation contains very strict implementation requirements. The table below clarifies what the FAA means by “project implementation.” When there are two possible dates for the start of a project (other than land acquisition), such as when the notice to proceed is scheduled for May 1 and the commencement of work for May 15, the earlier of the two dates (in this case May 1), is considered the start of the project. If there are two dates for the start of land acquisition, the FAA Airports office should consult with APP-510. In the preponderance of project types below, the PFC statute and regulation require that implementation must occur or must have occurred on or after November 5, 1990. AIR-21 extends the timeframe for PFC eligibility of terminal development for public agency’s meeting certain requirements. In certain cases, a public agency may identify specific projects in its application that are ordinarily subcomponents of an overall development project. These projects, such as “grading and drainage improvements,” “foundations for new terminal,” or similar types of projects may be approved by the FAA. However, the FAA should only approve such projects when the public agency can demonstrate in its application that the overall development project will proceed in a timely manner and result in a usable unit of work. Dividing an overall development project into subcomponents cannot be used to circumvent the implementation requirements of Part 14 CFR 158.

Table 4-10. Project Start Dates

Type of Project	Start of Project
Construction (includes construction projects combined with design and/or land acquisition)	Date of notice to proceed or start of physical construction for the PFC project or an element thereof
Equipment/Vehicle (Refurbish)	Date of award of contract to refurbish the vehicle or equipment
Equipment/Vehicle (New)	Date of award of contract or delivery date for new equipment
Land	Date of commencement of title search or execution of a contract/agreement for the purchase of the parcel
Planning	Date of notice to proceed or commencement of work
Project formulation costs (includes appraisals, engineering, title searches, etc.) as a separate project(s)	Date of notice to proceed or commencement of work

The FAA tracks project implementation and completion through quarterly reports that the public agency must prepare. Inadequate progress on PFC-funded projects may lead to

informal resolution that addresses the delay or lacking that, the formal termination of PFC collections. Additional guidance on the termination process may be found in Chapter 15.

- 4.3.18 **Disagreements and Negative Comments.** The FAA strongly encourages airports to work with the air carriers throughout the facility planning process, long before initiating any particular capital financing process. In many cases, issues can be resolved and agreements reached informally about how the airport will use PFC resources, long before the formal PFC consultation process. However, if an air carrier opposes a project during the consultation process, the public agency must address the objection and explain why it chooses to proceed in spite of the objections. The FAA must then review the public agency's explanation and agree, disagree, or seek clarification. In general, these comments and responses should be evaluated in the context of the parameters of Project Justification, although objections may be raised about Project Eligibility, Project Objective, or Significant Contribution as well. Objections from the public, although they have been relatively rare, must be considered as well. Environmentally-related comments, unless equally applicable to PFC approval criteria, should be considered in the context of the environmental finding process rather than at the PFC approval/disapproval stage. In general, if there are disagreements expressed during the consultation process, particularly from a major carrier, then the PFC decision will not generally be delegated to the FAA Regional Airports Division Manager.

The Non-Hub Pilot Program and Related Streamlining Changes Final Rule (70 Fed. R. 14928, March 23, 2005), made three changes to the notice and consultation process for all PFC applications and notices of intent. Each change is discussed below:

- 4.3.18.1 **Air Carrier Consultation.** The final rule amends the air carrier consultation process to require that public agencies consult with only those carriers that have a significant business interest at the airport where a PFC has been proposed. (The public agency may continue to offer the opportunity for consultation to carriers who do not have a significant business interest at the airport, but this is no longer required to satisfy the statute and regulation.) An air carrier or foreign air carrier with a significant business interest at an airport is defined as one that meets at least one of the following conditions:

1. Had no less than 1.0 percent of passenger boardings at that airport in the prior calendar year
2. Had at least 25,000 passenger boardings at that airport in the prior calendar year, or
3. Provides scheduled service at that airport

- 4.3.18.1.1 **Public Agency Procedures.** Before submitting a PFC application, a NOI under the non-hub program, or an amendment request requiring notice to a PFC application, the public agency must review its annual enplanements report to determine which carriers qualify as significant business interests.

The public agency must then follow the normal procedures for consultation, but need only contact those carriers identified as significant business interests.

4.3.18.1.2 **FAA Procedures.** The FAA field office must review the public agency's determination of which carriers have a significant business interest and confirm that all of them were sent a consultation notice. The "Checklist for Review of PFC Application," which has been modified to incorporate the new rule on significant business interest, is available at [PFC Program Airports](#). A similar checklist for the review of non-hub notices of intent is also available on the FAA PFC website.

4.3.18.2 **Notice and Opportunity for Public Comment.** The Final Rule adds a requirement that public agencies must provide a notice to the public and provide an opportunity for comment before submitting (1) a PFC application, (2) a NOI under the non-hub program, or (3) an amendment request requiring notice for a PFC application. The public notice and comment period may be run concurrently with the air carrier consultation period.

4.3.18.2.1 **Public Agency Procedures.** The Final Rule lists the eight types of information that the notice must contain, which are similar to those required for either the air carrier consultation notice of the carrier consultation meeting.

The public agency has several options for publishing the public notice: in a local newspaper, in other local media, posting on the public agency's web site, or any other method acceptable to the Administrator. If the public agency wants to use an "other method," it must get prior approval to use it the RO or the ADO.

The public notice and comment requirements are statutory provision and thus cannot be deleted or waived. The FAA does not encourage a public agency to combine the PFC notice and comment period with other, similar public notice and comment periods, such as those of environmental and master plan reviews. However there may be individual circumstances where this is advantageous to a public agency as long as the combined notice meets the information and distribution requirements of the PFC regulation.

As explained in Chapter 3, the application, NOI, or amendment requiring notice must be submitted within six months of the carrier consultation meeting, with limited exceptions. The FAA has adopted that same six -month limit for the public notice and comment period. As noted in Paragraph 3.4.3, there is a limited exception to the 6-month requirement.

The public agency must submit evidence that it has complied with the public notice and comment requirement in its PFC application, NOI, or amendment request. Evidence of compliance includes information on the method used to publish the notice (such as a screenshot of the notice on the public agency's

web site), a summary of any project disagreements submitted by the public, and the public agency's reasons for proceeding despite those disagreements.

- 4.3.18.2.2 **FAA Procedures.** The public agency may contact its local FAA Airports office before the public notice and comment period to discuss the method they wish to use to publish their public notice. The FAA will evaluate and consider proposed alternative methods on a case-by-case basis. The ADO must coordinate with the regional PFC contact and APP-510 before issuing its decision. In evaluating a proposed method of publication, the primary question the FAA should ask is whether the proposed method of publication will be accessible to the vast majority of the local community?

Section 4.4 Project Construction Oversight

- 4.4.1 **General.** This section addresses the FAA's project construction oversight responsibilities, which are to ensure that the public agency complies with the standards and specifications in the PFC Program Assurance 9. The FAA's oversight responsibilities focus on the public agency's plan to provide for operational safety on airports during construction. In general, PFC-funded projects are not monitored as closely as are AIP-funded projects. However, for projects involving both PFC and Federal funds, unless work items are clearly separable by funding source, Federal project oversight guidance applies. At the FAA's discretion, the certification of compliance with PFC Assurance 9 may be accepted from a public agency for PFC-funded projects. However, for construction safety plans, a determination of compliance must be made before the submission of a PFC application and documented in the project file.
- 4.4.2 **Coordination of Projects.** If no Federal funds are involved, after a PFC project has been approved, the FAA Airports office will review the public agency's construction safety plans and any additional airspace review required for PFC projects as it would for any other non-Federally funded project. The public agency is responsible for arranging any subsequent project coordination meetings and any notification of other FAA divisions regarding meetings, facility shutdowns, and construction schedules.

Section 4.5 Projects with Some AIP Funds

- 4.5.1 **Oversight of PFC/AIP Funded Projects.** The oversight requirements of AIP apply to any project that uses a combination of PFC and existing or proposed AIP funding, as when PFC funding is used as the 'matching share' for an AIP project. This requirement also applies to interdependent projects that are segmented, where an airport seeks to use PFC funds for one portion of the project and AIP funds for another portion. This is most commonly seen when PFC funds are used to acquire land and AIP funds are used to develop a project on that land. In such cases, the public agency must follow AIP project oversight for the land acquisition.

Section 4.6 Projects with No AIP Funds

- 4.6.1 **Preconstruction Conference.** At its discretion, the public agency may hold a preconstruction conference before the start of PFC projects. FAA Airports office personnel need not attend.

The guidance set forth in AC 150/5370-12B ‘Quality Management for Federally Funded Airport Construction Projects,’ specifically Chapter 2 Predesign, Prebid and Preconstruction Conferences, may be used by the public agency in preparing the agenda for a preconstruction meeting agenda and in determining what parties should be notified of the meeting.

- 4.6.2 **Labor and Disadvantaged Business Enterprise (DBE).** Projects funded totally with PFC revenue or with financing other than Federal funds are not subject to Federal labor and DBE requirements. However, the public agency may be subject to state and local labor and DBE or comparable laws or ordinances.
- 4.6.3 **Design, Construction, and Equipment Standards.** PFC Assurance 9 requires the public agency to adhere to FAA airport design, construction, and equipment standards and specifications contained in ACs current as of the date of project approval. The FAA concluded in the 1991 rulemaking process that this assurance is appropriate to further the objective of system-wide uniformity. Portions of projects exceeding applicable FAA design, construction, and equipment standards are not generally AIP- or PFC-eligible.
- 4.6.4 **Notice to Proceed.** The public agency must provide the FAA Airports office with a copy of the Notice to Proceed issued to project contractors, which confirms the ‘implementation date’ of each approved project. If the public agency does not provide a copy of the Notice to Proceed to the FAA, it may submit a copy of its quarterly report project schedule or other proof that construction has commenced. The schedule should show that the physical construction of the project has begun, confirming the ‘implementation date.’ To be eligible for PFC funding the ‘implementation date’ must have occurred on or after November 5, 1990, or as described in 10-27(d).⁴⁰
- 4.6.5 **Construction Records.** The public agency must maintain construction records that are consistent with recognized construction engineering practices. These records should provide, at a minimum, documentation that the construction was completed in accordance with appropriate FAA design, construction, and equipment criteria. However, the public agency is not required to complete any FAA construction-related forms.
- 4.6.6 **Safety.** AC 150/5370-2C, (or subsequent edition), *Operational Safety on Airports During Construction*, must be followed by the public agency to ensure that operational safety is maintained during periods of construction. FAA review, coordination with other FAA offices, and subsequent approval of construction safety plans for PFC projects will be completed using the same procedures as those for other non-Federally funded projects.

⁴⁰ A Notice to Proceed or start date for the project design or other engineering services is not considered to be an ‘implementation date’ for a construction project.

- 4.6.7 **Parts 1542 and 139 Requirements.** The public agency is responsible for ensuring compliance with 14 CFR Parts 1542 and 139 requirements. These requirements include any actions necessary to control airport operational areas in accordance with the approved Airport Security Plan and the Airport Certification Manual or Airport Certification Specifications. The public agency should consult with the appropriate Transportation Security Agency office and FAA Airports office regarding these requirements.
- 4.6.8 **Land Acquisition.** Projects that are funded with PFC revenue or with financing other than Federal funds are not subject to 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (also known as the Uniform Act) requirements. However, the public agency may be subject to state and local land acquisition laws.
- 4.6.9 **Procurement Methods.** Projects that are funded with PFC revenue or with financing other than Federal funds are not subject to 2 CFR 200 Procurement Methods requirements. However, the public agency may be subject to state and local procurement laws.
- 4.6.10 **Suspended or Debarred Persons or Companies.** Projects that are funded with PFC revenue or with financing other than Federal funds are not subject to 2 CFR Part 180 requirements that prohibit entering contracts with suspended or debarred persons or companies. However, the public agency may be subject to state and local laws.
- 4.6.11 **Other General Contract Provisions Under AIP.** A number of other contract provisions that must be included in AIP grants are not required for projects fully funded with PFC revenue. Such provisions include: Veteran's Preference, Davis Bacon, Buy American Preferences, and others. For a list of the Contract Provisions for AIP grants, use the following link: [Procurement and Contracting Under AIP - Federal Contract Provisions](#). The public agency must verify its compliance with any State or local laws.
- 4.6.12 **Regulatory Compliance.** The approval of a PFC application is a Federal action, so all Federal regulatory requirements must be met. Specifically, the FAA Airports office must provide sufficient project oversight to ensure that:
1. The project complies with all conditions of FAA environmental review and approval required by the National Environmental Policy Act (NEPA) of 1969
 2. A final FAA airspace determination with respect to the project has been completed, if required, and
 3. Any project required to be shown on an Airport Layout Plan has been approved.
- 4.6.13 **Noise Compatibility.** A noise mitigation project must be located in an area adversely impacted by noise (supported by current noise contours) and the proposed mitigation must be eligible for approval as a noise compatibility measure under Part 150. PFC-funded projects do not have to be submitted to the FAA in a Part 150 program and do not have to receive Part 150 approval. However, the FAA does require that the project be in an approved local plan and that the project has sufficient documentation to demonstrate that it will accomplish a noise mitigation purpose as it would under Part 150.

Chapter 5. Application Submittal, Review, and Decision

Section 5.1 Overview

5.1.1 **General.** This chapter describes the PFC application, its availability, the public agency's schedule for submitting an application, the FAA's processing of the application, and the requirements for the official application file.

As noted in Chapter 2, the FAA urges public agencies to coordinate PFC applications with the FAA, including having the FAA review a draft of the application before it is submitted.

The following figures summarize the application process for impose only, impose and use, and use only applications.

Figure 5-1. Impose-Only PFC Process Review

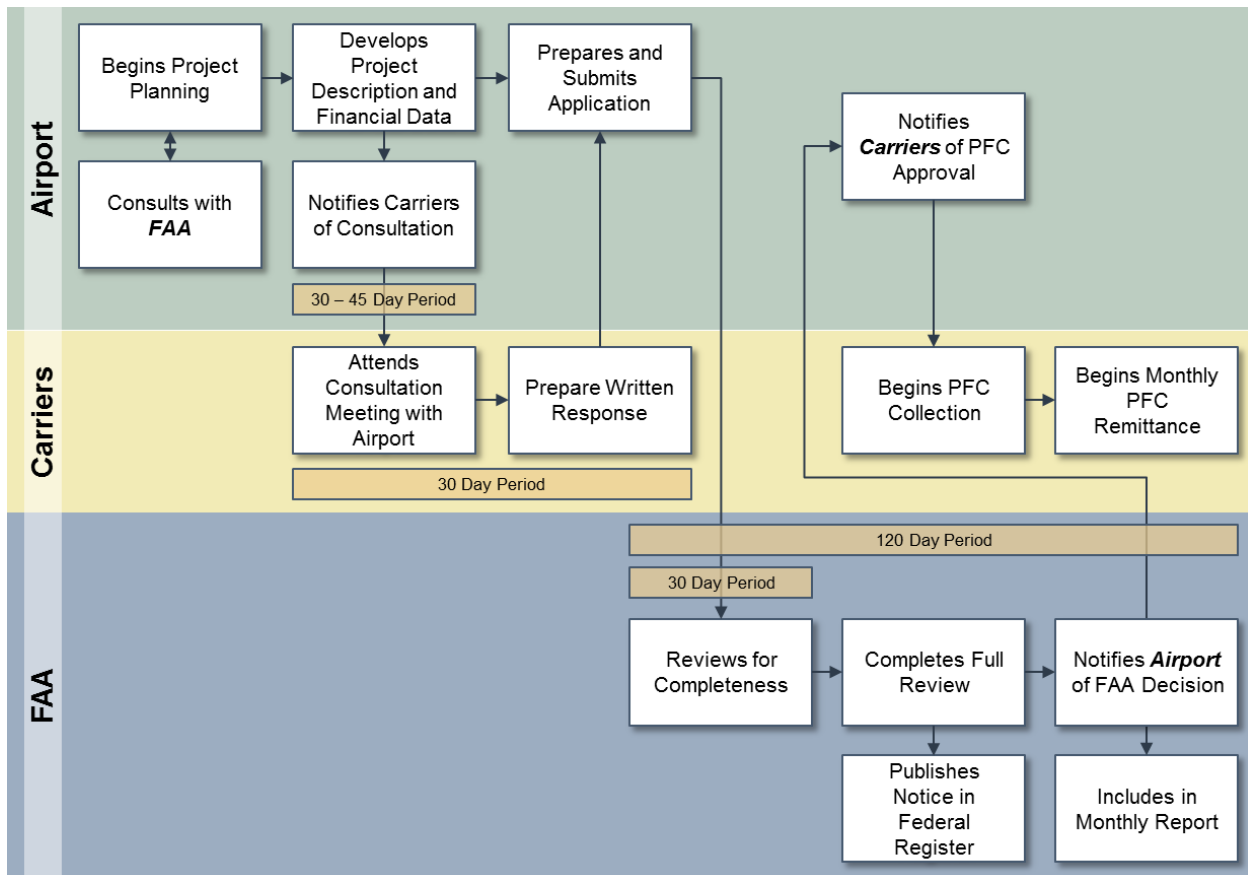


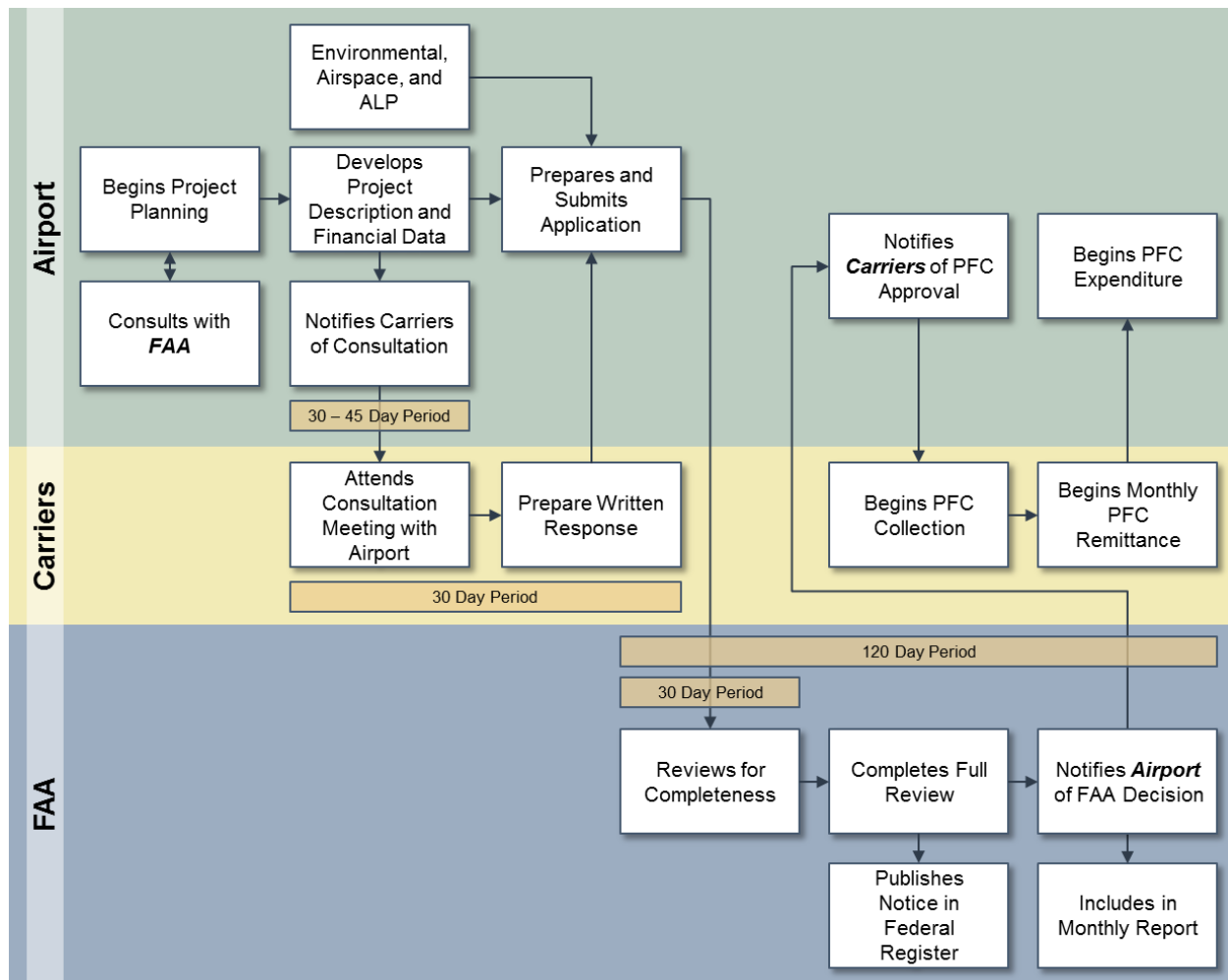
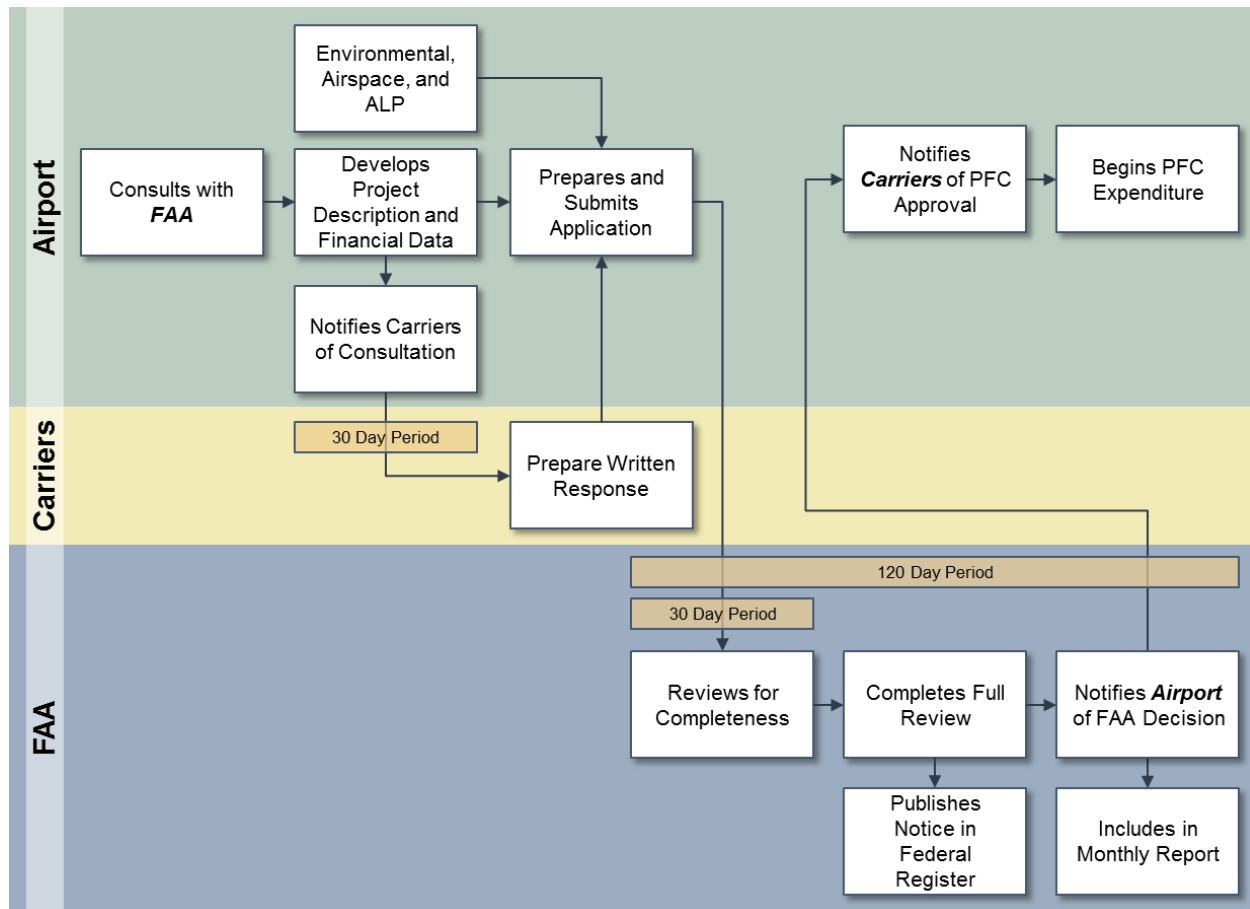
Figure 5-2. Impose and Use PFC Process Review

Figure 5-3. Use Only PFC Process Review

Section 5.2 Application Submittal⁴¹

5.2.1 Public Agency Procedure for Submittal.

- 5.2.1.1 **Forms.** The PFC application form, FAA Form 5500-1 (including instructions for preparing the attachments and the format for Attachment B), is posted on the FAA's PFC web site and is also available at any FAA Airports office. All public agencies must use this form to submit PFC applications. Failure to use the prescribed format may result in a determination that the application is not substantially complete. Three copies of the completed application must be submitted to the FAA, as indicated on FAA Form 5500-1: two copies to the FAA Airports office and one copy to APP-510. If the public agency submits all three copies to the FAA Airports office, then the FAA Airports office must immediately forward one copy to APP-510. The FAA strongly encourages the electronic submission of Form 5500-1 and all associated attachments.

⁴¹ The review and decision process for a NOI are addressed in Chapter 6.

5.2.1.2 **Timing of Submission.**

5.2.1.2.1 **Initial Application.** The PFC Regulation requires that the air carriers be provided with a 30-day comment period following consultation (14 CFR §158.23(c)(2)). Therefore, the application may not be submitted until at least 30 days after the consultation meeting with the carriers (*see* also Paragraph 3.2.6). In the case of use applications for which a meeting is not required, the application may be submitted no sooner than 30 days after the written notice to air carriers concerning the application. The public agency should also allow for additional time to give full and proper consideration and prepare its required responses to the air carriers' comments, which must be included in the application package. The public agency must remain cognizant of the six-month time limit on submitting an application after the conclusion of consultation, as a lengthy delay may necessitate that the public agency re-consult with the carriers (*see* also Paragraph 4.3.18.2.1).

5.2.1.2.2 **Subsequent Applications.** Once the FAA approves an impose-only application, the public agency has up to three years from the charge effective date to submit a use application. However, if the time between the application approval and charge effective date is more than 60 calendar days, then the public agency has three years to submit a use application from the approval date, not the charge effective date (*see* 14 CFR § 158.33(c)). This is most likely to occur when the public agency submits a subsequent application before the charge effective date is reached (*see* examples below).

Table 5-1. Example of Use Application Requirement Dates

Type	Application Approval	Charge Effective Date	Use Application Required by
Impose-only application when calendar days between application approval and charge effective date is equal to or less than 60 days	Jan. 25, 2015	Mar. 1, 2015	Mar. 1, 2018
Subsequent Impose-only application when calendar days between application approval and charge effective date is greater than 60 days	Jun. 5, 2017	Mar. 1, 2035	Jun. 5, 2020

If the public agency has several impose-only projects, it may elect to file one combined use application or several separate use applications during that three-year time frame. In addition, the public agency may request an extension for the time to submit an application for use approval, if progress toward implementation of an impose-only project has been delayed for valid reasons (the extension must be approved by APP-510 and may be for up to two years, for a maximum impose-only time of five years (*see* Chapter 10). The FAA Airports office will assist the public agency in monitoring this requirement (*see* Chapter 9).

The public agency may submit a new impose-only or impose-and-use application at any time. However, if the public agency wants to maintain PFC collection without interruption, the new application must be formally submitted at least 180 days before the charge expiration date of the previous application. As a best practice for both the FAA Airports office and the public agency, each should both track the rate of collections and the estimated charge expiration date, although the ultimate responsibility rests with the public agency. The public agency should begin work on an additional application at least one year before the collection for the current application is scheduled to expire, which will allow for the orderly development, consultation, and evaluation of the new application. The public agency risks having to stop and restart collections if the subsequent application is not submitted in a timely manner. Interruptions in PFC collections are administratively burdensome for the air carriers, the FAA, and the public agencies.

5.2.2 FAA Acceptance of Application Submittal.

- 5.2.2.1 **FAA Receipt of Application.** When the FAA Airports office receives an application, an analyst must write the date that the application has been received in the mail in the appropriate box on the application form and input the receipt date, along with other relevant data into the System of Airports Reporting (SOAR) database within three (3) business days.
- 5.2.2.2 **Application File.** An application file is a collection of documents pertinent to a particular PFC application. The PFC file system has been established and is maintained by the FAA Airports office. As a best practice and to the extent practicable, such a file should be maintained electronically, provided sufficient backup is maintained to protect against accidental loss. File information includes documents that track a project from the receipt of the PFC application (and any official correspondence to or from the FAA leading up to the application) through its closeout. At a minimum, the application file must include the following information (document sources or references are indicated):
1. The PFC application, including attachments (available at [PFC Program Airports](#))
 2. The checklist for Review of Application (available at [PFC Program Airports](#))
 3. The Letter to the public agency on application completeness (available at [PFC Program Airports](#))
 4. The Public agency's notice of application supplement, if applicable (*see* Paragraph 5.3.3.3)
 5. The application supplement, if applicable (*see* Paragraph 5.3.3.3)

6. The *Federal Register* notice, as published (*see* Paragraph 5.3.3.5)
7. Public comments resulting from the *Federal Register* notice (*see* Paragraph 5.3.6.1.16)
8. Any additional information or clarification requested from the public agency by the FAA Airports office
9. Determination of Delegation (*see* Paragraph 1.4.1)
10. A recommendation package, including a copy of Attachments B and G, with the 'For FAA use' portions completed (PFC internet document site) and the PFC Application Recommendation Form (PFC intranet document site)
11. Any memoranda or similar documentation supporting the FAA Airports office's recommendation for approval or disapproval
12. A copy of the signed determination package, including the letter to the public agency and the Final Agency Decision (FAD)
13. A copy of the public agency's notification to carriers to begin the collection of PFCs (*see* Section 7.2)
14. The public agency's quarterly reports (*see* Paragraph 16.2.1) for any time the reports have not been input directly into SOAR
15. The public agency's annual July 1st revenue estimate, if applicable (*see* Paragraph 16.2.2)
16. Any documents associated with amendments and extensions (*see* Chapter 10, Chapter 11, Chapter 12 and Chapter 13)
17. Any documents associated with termination proceedings (*see* Chapter 15)
18. Public agency annual audits, as requested (*see* Paragraph 16.4.5)
19. Any termination protection documentation for stand-alone PFC financing, if applicable (*see* Chapter 15)
20. The project completion certification (*see* Paragraph 14.2.6)
21. The PFC application closeout report, printed from SOAR (*see* Chapter 14)

Files of disapproved PFC applications must contain all the information from items 1 through 13 above. An application file must be maintained until all projects within it have been physically and financially completed and the application has been closed out. Following closeout, the file can be reduced to include only the signed determination package, amendments, extensions,

and the letter sent by the FAA to the public agency to confirm application close out. However, the FAA Airports office should use its discretion and retain materials that may be relevant to future evaluations of projects completed under the application.

5.2.2.3 Determination of Delegation. See Section 1.4.

Section 5.3 Application Review and FAA Decision

5.3.1 Application Components. A PFC application consists of FAA Form 5500-1 and the following attachments:⁴²

1. Attachment A – Airport Capital Improvement Plan
2. Attachment B – Project Information (see Attachment B form and instructions on FAA web site)
3. Attachment C – Air Carrier Consultation and Public Notice Information
4. Attachment D – Request to Exclude Class(es) of Carriers
5. Attachment E – Alternative Uses/Projects
6. Attachment F – Competition Plan/Update
7. Attachment G – ALP/Airspace/Environmental
8. Attachment H – Notice of Intent Project Information
9. Attachment I – Other Information (as needed)

5.3.2 Application Completeness Review.

- 5.3.2.1 FAA Form 5500-1.** FAA Form 5500-1 must be as accurate as possible. Small errors, such as an incorrect address or telephone number will not cause the application to be not substantially complete, but nevertheless should be corrected by the public agency at the first opportunity.
- 5.3.2.2 Attachment A: Capital Improvement Plan (CIP).** The Capital Improvement Plan should, to the greatest extent possible, cover all proposed projects over the required time frame (including consideration of the whole PFC collection period), particularly for those proposed for PFC funding.
- 5.3.2.3 Attachment B: Completeness Review.** Attachment B is designed to capture project-related issues and to permit the efficient review of required project information that is necessary for the FAA to make its statutory and regulatory

⁴² Not all attachments are necessary for each application. See instructions on the FAA web site or contact the local FAA Airports Office for assistance.

determinations. The attachment B is critical for the substantial completion determination.

- 5.3.2.4 **Consultation Information.** It is of particular importance to review the air carrier consultation information submitted with the application, including notice and meeting dates, the list of air carriers consulted (to ensure that no carriers were missed), the information provided to the carriers, and responses. This information is critical since failure to comply with these requirements will require that the FAA disapprove the application in whole. See Section 3.2.
- 5.3.2.5 **Public Notice Information.** Information concerning the public notice and comment is critical to the FAA's review of the PFC application. The application must have the date of the public notice, a copy of the information contained in the notice, any comments from the public, and the public agency's response to those comments for the FAA to be able to find the application complete. See Section 3.3.
- 5.3.2.6 **Attachment G.** This attachment contains critical information about the status of the airport's environmental finding for the projects, any necessary airspace reviews, and required airport layout plan approvals.
- 5.3.2.7 **Determination of Delegation.** The FAA Airports office will recommend the application's delegation status on the basis of the criteria outlined in Section 1.4 to the FAA Airports Regional office and APP-510 for review and concurrence.
- 5.3.2.8 **Coordination Required for Applications Expected to be Found 'Not Substantially Complete'** The use of the procedures described below will ensure that information on important PFC decisions will be available to senior decision makers in a timely manner:

The PFC application of any large or medium hub airport that has been determined to be 'not substantially complete,' whether or not the decision has been delegated to the region, must always be briefed up (to the ARP-1/-2 level) before a letter is issued. The Region/ADO must notify APP-500 as soon as possible but not later than ten (10) full business days prior to the notification deadline. The draft notification letter itself must be provided for review by APP-1/-2, allowing at least five (5) full business days for review before the 30-day regulatory completeness deadline. This review process must be coordinated through APP-510.

The 'not substantially complete' letter must be clear and detailed, and include any information that might ultimately impede a favorable determination of the application.

After a large or medium hub airport has supplemented its application, the Region must notify APP-510, which will brief senior management about any

remaining substantive deficiency that could impede a favorable determination. (This must be before issuing a subsequent letter or notice that the FAA has determined the supplemented application to be complete). If an issue arises after a finding of substantial completion that would lead to a project disapproval or partial approval (such as denying more than 10 percent of any given project's value or the requested collection level) the Region must notify APP-510, which will brief senior management within 60 days of the supplement being received (which would also be 60 days before the revised deadline for PFC approval).

Regions are responsible for notifying APP-510 promptly of the receipt of any new applications at large and medium hub airports including the identification of the receipt date and completeness determination date. APP-510 will follow up with the Regions as needed prior to the substantial completeness determination.

5.3.3 Completeness Determination.

5.3.3.1 **Review Checklist.** The Regional Office must review the PFC application for completeness using the Checklist for Review of Application and by completing the appropriate 'For FAA use' portions of Attachment B. These serve as the official FAA record for the determination of completeness and must be completed in sufficient detail and to demonstrate the FAA's analysis of the various aspects of the application needed to reach a completeness determination. The 'comments' section in 'For FAA use' sections must be filled in with written evidence of the FAA's analysis. It is not sufficient to simply 'check boxes' on the 'For FAA use' sections of Attachment B. At the end of the evaluation, the FAA reviewer must make a finding of completeness and sign and date the checklist.

5.3.3.2 **Substantially Complete.** Within 30 days of the receipt of an application, the FAA Airports office will determine whether the application substantially complies with the requirements of the PFC statute and regulation (*see* 14 CFR § 158.27(b)), and if:

1. The application contains the required information, in sufficient detail, that a determination on each project will be possible;
2. The application provides sufficient eligible alternatives for impose-only projects;
3. Environmental, ALP, and airspace requirements are *complete* for impose-and-use or use projects; and
4. Air carrier consultation was conducted properly.

At this point in the review process, the FAA's objective should be limited in scope, with the intent of notifying public agencies of any concerns as early as

possible. Ideally, such concerns would have been anticipated in the application formulation meeting (*see* Paragraph 2.2.5) or as a result of the FAA's review of a draft of the application. The project description, justification, and financial plan must provide sufficient detail that a person not familiar with the airport will be able to understand the project. The substantial completion review process is not intended to be a comprehensive review of the whole PFC application and project information. For example, a complex project (such as passenger terminal development) may ultimately require additional information to satisfy the regulatory requirements regarding competition, and it may not be possible to fully determine the completeness of such information during the 30-day completeness determination.

Public agencies that request impose-only PFC authority must address alternative PFC uses (*see* Paragraph 5.3.4.2). If sufficient eligible alternatives are not included in an application that contains impose-only projects, the application must be found not substantially complete. In such cases, the public agency will have to consult with the air carriers on new or additional alternatives. Alternatively, the public agency could move sufficient primary projects, which were included in the consultation, to alternative status to provide the needed coverage. The public agency could also choose to withdraw some or all of the proposed impose-only projects from the application.⁴³

A notice that the FAA has found an impose-and-use or use application to be substantially complete is an acknowledgment that the FAA has completed actions and issued findings regarding environmental, ALP, and airspace requirements. Therefore, the FAA's review must ensure that these actions are in fact completed.

If the FAA reviewer determines that an item on the checklist does not meet requirements or has not been included in the application, this deficiency must be noted and the application determined to be not substantially complete. An exception to this, however, may be the lack of certain general, non-critical items, such as a telephone number, which do not impair the FAA's ability to make a decision. These non-critical items should be corrected by the public agency as soon as possible.

The FAA reviewer must verify two dates that are stipulated by regulation: (1) the consultation meeting with carriers must have been held no earlier than 30 days nor later than 45 days from the date of written notice to the carriers; and (2) at least 30 days must have passed from the date of the consultation meeting to the date that the public agency submitted its application to the FAA to allow for carrier certification of agreement or disagreement (*see* 49 U.S.C § 40117(c)(2) and Paragraph 3.2.7). If the public agency has not

⁴³ The requirement for consultation on alternatives is the result of a court decision regarding an early PFC determination (*see Northwest Airlines, Inc. v. Federal Aviation Administration*, 14 F.3d 64 (D.C. Cir. 1994)).

complied with these time frames, the application will be determined to be not substantially complete. An exception would be granted if the public agency has moved a date to accommodate an accelerated schedule and the air carriers affected by the change, once advised of it, register an affirmative agreement. If more than one carrier is affected, their agreement must be unanimous.

If the FAA Airports office is aware of any ongoing investigations or findings with regard to non-compliance with ANCA or revenue diversion they must consult APP-510, APP-400, and ACO-100 to determine if the application will be found not substantially complete (in that the FAA would lack sufficient information to make a the required positive determination of compliance).

FAA Airports office must advise the public agency, in writing, of the application's status after it completes the checklist. The format for a 'substantially complete' letter and a 'not substantially complete' letters is shown on the PFC intranet document site. The appropriate letter must be signed by the regional Airports Division Manager. Prior coordination with FAA Airports headquarters, as described in Paragraph 5.3.2.8, is required for PFC applications for large and medium hub airports.

5.3.3.3 Public Agency Intends to Supplement. When the FAA determines that the application is '**not substantially complete**,' the public agency has only one opportunity to formally supplement its application. The public agency's response to a request by the FAA Airports office for a minor clarification of an item during the review process is not considered a formal supplement to the application.

The public agency has 15 calendar days from the date the FAA issues a 'not substantially complete' letter to provide *written notice* that it intends to supplement its application, or it may withdraw any projects that have been found to be 'not substantially complete.' The public agency only has to submit a written notice of intent to supplement within this time limit. The actual supplement to the application can follow at a later date (*see* 14 CFR § 158.27(d)(2)).

After the public agency has indicated it intends to supplement its application, the regulation does not specify a time period in which the supplement must be submitted to the FAA. However, if the public agency expects a delay in submitting its supplement (greater than six months), the public agency plans to make a significant change in the application, or if operating conditions at the airport have changed substantially from the date of the initial consultation, then the public agency must re-consult with the carriers and issue an updated notice for public review and comment. Chapter 11 provides instructions on determining what types of changes would require these steps. Supplements that change project amounts, PFC levels, or change the nature of a project will require re-consultation as would be required of similar amendment actions.

If the public agency supplements its application, the statutory 120-day approval period restarts when the FAA receives the supplemental information. There is no requirement for the FAA to make a new completeness determination. At this point, the FAA must make a determination based on the supplemented application as submitted. Since the decision is made on the supplemented application, the FAA recommends that the public agency submit a draft of its supplement before formal review by the FAA.

5.3.3.4 **Public Agency Response Intends Not to Supplement.** If the public agency informs the FAA that it does not intend to supplement its application or does not respond to the FAA within the 15 calendar days from the date the FAA issues a not substantially complete letter, the FAA will proceed to process the original application on the 120-day statutory approval period based on the initial application submittal date. The public agency may still choose to withdraw any projects that have been found to be not substantially complete or it may withdraw its application completely.

5.3.3.5 **Federal Register Notice.** In circumstances when projects in the application are controversial (noted by air carrier or public comment), or are precedent-setting, the FAA may choose to publish a *Federal Register* notice for a substantially complete application (*see* 14 CFR § 158.27(c)(2)). The FAA Airports office must prepare a *Federal Register* notice in accordance with the instructions and format provided in the PFC intranet document site. The *Federal Register* notice must be prepared at the same time as the 'completeness' letter.

The *Federal Register* notice or notices must be sent to the Office of the Docket, AGC-10, for publication in the *Federal Register*. The FAA's Regional Office must prepare the Federal Register notice and submit it to APP-510, for review prior to submittal to AGC-10 for publication. APP-510 will monitor the status of publication and keep the Regional Office apprised of its status.

5.3.4 Application Analysis

5.3.4.1 **Amount and Duration of PFC.** To approve or partially approve an application, FAA must determine that the amount and duration of the PFC collection proposed will not result in the collection of revenues that exceed the amount necessary to finance the projects (*see* 49 U.S.C. §40117(d)(1) and 14 CFR §158.29(a)(i)). The following items must be considered when evaluating the amount and duration of PFC collections:

5.3.4.1.1 **Reducing the Duration of the PFC.** If the total requested PFC revenue, plus interest earned on that revenue, exceeds the estimated allowable costs for the approved projects, then the FAA must reduce the approved duration of authority to impose the PFC (*see* 14 CFR § 158.31(b)). The reduction must be made in increments of one month of collection authority until the collections

meet, but do not exceed, the estimated allowable costs. The FAA's estimated PFC charge expiration date must be the first day of a month, so collections may continue until, but not including that date.

- 5.3.4.1.2 **Increasing Duration of the PFC.** If the total requested PFC revenue, plus interest earned on that revenue, is less than the estimated allowable costs for the approved projects, the FAA cannot increase the duration of authority to impose a PFC beyond what the public agency has requested in its application. Section 7.3 describes the procedure for a public agency to extend the duration of collection if the rate of collection is less than was anticipated. If the public agency needs to increase the total estimated PFC revenue by extending the duration of collection, then refer to the appropriate amendment process in Chapter 11, Chapter 12, or Chapter 13 as applicable.
- 5.3.4.1.3 **PFC Administration Costs.** A public agency's reasonable and necessary costs of administering the PFC program are considered allowable costs and may be reimbursed from PFC revenues (*see* 14 CFR § 158.13(b)). A public agency may choose to accomplish the PFC administration tasks by contracting through a consultant, the use of its internal personnel, or a combination of the two. The public agency may wish to use FAA Order 5100.38, Airport Improvement Program Handbook as a guide to what are considered reasonable and necessary costs. The public agency may allocate these costs by use of an indirect cost allocation plan similar to those used for AIP or may allocate them directly. The public agency may plan to use a portion of the approved PFC revenue to fund a part or full time position for the administration of its PFC program. The tasks to be performed by that employee must be listed in the project description of the FAD. As a condition for the FAA's approval of the funding of a dedicated PFC position, the FAA Airports office must ensure that the FAD requires that the public agency provide annually a letter certifying that the funds expended for that employee have been exclusively used for PFC administrative tasks during the preceding year, along with a record showing the hours spent on each major PFC-related task listed in the description of the project. The allowable portion of the public agency's direct costs of administering its PFC program do not include costs associated with operations and maintenance to support the position, general purpose equipment such as computer hardware, nor benefits including, but not limited to leave, retirement, or overhead or project management activities. Administrative costs not directly addressed in the FAD are not eligible.
- 5.3.4.1.4 **Certain Stand-Alone PFC Administrative Costs.** A public agency may submit a 'stand-alone' project to recover reasonable and necessary costs of administering its PFC program. An Attachment B must be completed for a stand-alone PFC administrative costs request. If indirect or pro-rata administrative costs are included, the public agency must have retained a cost allocation plan that documents the basis for indirect administrative costs to be reimbursed with PFC revenues (*see* Paragraph 5.3.4.1.3). As but two

illustrative examples, PFC funding cannot be used to prepare AIP documents such as an airport's Capital Improvement Plan or Exhibit A Airport Property Map.

- 5.3.4.1.5 **Project Reimbursement Restrictions.** PFC revenue cannot be used to reimburse a public agency for that portion of the final project costs for which state or Federal grants have been expended. Also, PFC revenues cannot be used for final project costs for which airline rates and charges have been expended unless the public agency adjusts the rates and charges (*see* Section C.1 in Appendix C). This prohibition does not apply to the interim use of funds from state grants for those states that allow fungibility for cash flow purposes that are not ultimately reflected in the final accounting of project costs.
- 5.3.4.1.6 **Legally Enforceable Debt.** If the public agency is proposing to use PFC revenue to pay debt service expenses associated with an approved project, the indebtedness must be a debt of the public agency that is legally enforceable by the lender. This means that the lender has the legal authority, as a creditor, to bring suit, in its own name, directly against the borrower to recover funds advanced by the lender to the borrower. Loans from a public agency's general fund to an airport capital fund are not usually legally enforceable debts. Any financial plan in a PFC application that includes debt service expenses associated with a loan from another public fund must include a legal opinion that such a debt is legally enforceable. In addition, the interest rate for the loan cannot exceed applicable market rates. Contact APP-510 if there is a question as to whether a proposal would constitute a legally enforceable debt. (*see* Paragraph 4.3.10).
- 5.3.4.2 **Alternative Uses of PFC Revenues.** The FAA will make a finding regarding any alternative uses of PFC revenues to ensure that such revenues can be readily used on approvable projects if a proposed primary project is ultimately abandoned or disapproved (*see* 14 CFR § 158.29(a)(2)). Alternative projects must meet eligibility criteria and PFC objectives, as would any primary project (*see* 14 CFR § 158.29(a)(2)). However, as with an impose-only project, an alternative project does not have to meet the ALP, airspace, and environmental requirements at the time it is listed in the PFC application. Alternative projects must be able to be implemented within five years of the charge effective date. Finally, PFC revenues may be used for the early retirement of outstanding PFC-funded project debt for approved impose-and-use or use projects.

For an impose-only application, the public agency must provide eligible alternative uses to cover at least five years of collections or the value of the impose-only projects, whichever is less. The 'five year rule' comes from the regulatory requirement that all projects must be implemented within five years of the charge effective date or the application approval date, or collection will be terminated (*see* 14 CFR § 158.33). Therefore, the maximum PFC revenue not committed to a project approved for use authority would be the amount of

revenue collected in five years. For first time applications, or applications that follow a lapse in collections, the five-year period applies to the five years following the charge effective date. For a subsequent application, the five-year period begins on the date that the application is approved.

If one or more projects approved for use in a prior PFC application would cover the next five years or more of collection (after deducting already-realized collections for the previously-approved projects), the public agency could use this collection to satisfy the five year requirement for a pending application. In contrast, a previously approved impose-only project could not be used to satisfy the five-year requirement, as it would be uncertain if the earlier impose-only project will ever be implemented.

In a pending application that combines impose-only and use projects, and a use project needs at least the next five years of collections, the public agency may choose not to provide alternative projects to cover the impose-only projects in that application, because the collection period for the use project meets the five year collection requirement. However, if the FAA does not approve the use project, the FAA would then either have to (1) disapprove the impose-only projects because there were no consulted alternatives; or (2) convert one or more impose-only or impose-and-use project to alternative status (based on consultation with the public agency) to reach the five year requirement. Similar actions may be required if only five years of alternatives are consulted and the public agency subsequently converts an impose-and-use project to impose-only after the consultation. Accordingly, the FAA should advise the public agency to provide alternatives in an application even when use projects in that application would, if approved, meet the alternative requirements for the impose-only projects.

5.3.4.3 **Excluded Class.** The FAA will determine if the public agency's request not to require a class or classes of carriers to collect PFCs meets regulatory requirements.

Each class excluded must not have more than one percent of the airport's total annual enplanements, although more than one class may be designated (*see* 49 U.S.C. § 40117(i)(3)(A) and 14 CFR § 158.11). The basis for the exclusion may be common carrier classifications found in FAA operational regulations (14 CFR Part 121, 135, 129), DOT economic regulations (14 CFR Part 298 and 241), or on any other that is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law. Classes that have been approved by the FAA include, but are not limited to:

1. Part 135 air taxi/commercial operators
2. Unscheduled Part 121 charter carriers
3. 14 CFR Part 298 operators

4. On-demand air taxi/commercial operators that enplane fewer than 500 passengers per year

The FAA Airports office must use the most recent final Air Carrier Activity Information System Database (ACAIS) Report to verify that each proposed excluded class represents no more than one percent of the total annual enplanements at the airport where the PFC is to be imposed. If the FAA Airports office determines that a proposed class exceeds the one percent threshold, it should note this finding and contact the public agency for clarification. Unless the public agency can provide current data showing that the class does not exceed one percent of enplanements, then the FAA must disapprove the exclusion of the class.

The public agency must review the excluded classes each year to ensure each class does not exceed one percent of total enplanements. If a class does exceed the one percent threshold, the public agency must apply for an amendment to the FAD to eliminate or modify the class. Excluded classes that were based on an operational or economical regulation should be periodically reviewed for regulatory changes by the public agency with assistance from the FAA Airports office. For instance, FAA regulations were changed in 1996 to meet the 'one level of safety' requirement for air carriers. Several Part 135 operators changed to Part 121 and were no longer eligible to be excluded as 'Part 135 operators.' To continue to exclude these carriers in an existing application, the public agency would have to apply for an amendment to the FAD (*see* Paragraphs 6.5.3 and 12.1.6).

- 5.3.4.3.1 **Impact on Air Carrier Consultation Requirement.** Air carriers in excluded classes need not be included in the air carrier consultation process. However, the FAA recommends that these carriers be invited to the consultation. If the carriers in an excluded class are not consulted and that class is subsequently disapproved by the FAA, the entire application could be disapproved or substantially delayed. If the public agency has already consulted with all the carriers, including the proposed excluded class, the FAA's disapproval of the exclusion of that class would not then require re-consultation, but would only require that those carriers also collect the PFCs.
- 5.3.4.3.2 **Special Exclusion for Air Service to Isolated Communities.** AIR-21 (Pub. L. 106-181, Sec. 135) created the authority for a public agency to request an exclusion of carriers that provide air service to isolated communities, even if such service by those air carriers as a class would exceed one percent of the airport's total annual enplanements. This exclusion category largely affected air service in Alaska.
- 5.3.4.4 **Compliance with ANCA.** A public agency cannot impose or collect a passenger facility charge if the FAA has determined that the airport is imposing any noise or access restriction not in compliance with the Airport Noise and Capacity Act of 1990 (ANCA). Under such conditions, FAA will

have taken formal action to terminate eligibility and the PFC application cannot be approved. Furthermore, the FAA cannot approve a PFC application if the FAA has issued a preliminary written finding of ANCA noncompliance and entered into an informal resolution process with the public agency. However, the PFC application can be approved at the end of the 120-day PFC review period if a preliminary written finding has not yet been issued (*see* 14 CFR 161.501-505).

- 5.3.4.5 **Compliance with Revenue Diversion.** Pursuant to 49 U.S.C. § 47111(e) (Action of Grant Assurances Concerning Revenue) the FAA is required to withhold approval of a PFC application for an airport if the FAA has determined that there has been a violation of 49 U.S.C. 47107(b) (Written Assurances on Use of Revenue) and 49 U.S.C. 47133 (Restriction on Use of Revenue) (*see* 14 CFR § 158.29(a)). This section states that, if the Secretary finds a violation of 49 U.S.C. 47107(b), as further defined under §47107(l) (Policies and Procedures to Ensure Enforcement Against Illegal Diversion of Airport Revenue), or a violation of an assurance made under 47107(b), and the Secretary has provided an opportunity for the public agency to take corrective action to cure such violation, and such corrective action has not been taken within the specified time, the Secretary will withhold approval of new AIP grants, or increases in existing grants, and withhold approval of any new PFC application to impose a PFC until such time as the Secretary finds that the corrective action has been taken. This action will not affect approved PFC applications, or decreases to an approved applications until such time as the public agency amends an approved application to increase collections or the PFC level. Note that the formal compliance process is ordinarily well underway—to the point where the period for the prescribed corrective action has expired—before an approval is withheld. If there is an ongoing investigation, the finding in the FAD regarding revenue diversion may need to be modified from the standardized text. The FAA Airports office must coordinate any change to the revenue diversion language with APP-510, which will further coordinate the language with AGC and ACO-100.
- 5.3.4.6 **Competition Plan.** A public agency that controls a large or medium hub airport that has one or two air carriers that enplane more than 50 percent of the annual boardings at that airport must file a competition plan in accordance with 49 U.S.C 40117(k). This requirement must be met in order for the public agency to receive AIP grants or PFC approvals. For additional information on this requirement, please see FAA Order 5100.38D, Airport Improvement Program Handbook, Appendix X, Competition Plans.
- 5.3.5 **Project Analysis.** Section 4.3 provides criteria for evaluating a projects eligibility, objective, justification, and significant contribution. The following paragraphs provide direction on how FAA should document whether or not a project meets these criteria, as well as, ALP, airspace, environmental findings and other considerations.

- 5.3.5.1 **Attachment B markup.** FAA Airport offices must complete the ‘For FAA use’ portions of Attachment B’s to support the FAA’s findings. For applications involving significant controversy or risk of litigation, the reviewer must cite comparable projects and related decisions when it has made similar findings. For example, if the total approval is over \$1 billion, then the reviewer must cite other FADs of comparable scope and magnitude. Because comparable projects may have occurred in other Regions, APP-510 can help identify comparable projects and supporting documentation for reviewers to examine for comparison purposes.

Specifically, it is not sufficient to simply ‘check boxes’ on the ‘For FAA use’ sections of the Attachment B where they are available. Rather, the FAA must use these sections to demonstrate its detailed analysis of each project. To do this, the ‘comments’ section in each ‘For FAA use’ section must contain written evidence of the FAA’s analysis.

- 5.3.5.1.1 **Description.** The comments area must be used to describe disagreements with the public agency’s description or clarify the description. For example, the FAA might note that the runway being rehabilitated is the main air carrier departure runway (which the public agency neglected to mention) or that the runway is actually 100 feet by 5,000 feet, rather than the 100 feet by 6,000 feet.

- 5.3.5.1.2 **Eligibility.** See Paragraph 4.2.3 for a detailed explanation of PFC eligibility. In addition, the following information must be provided for:

1. Snow removal and ice control equipment, the snow and ice control plan must be cited
2. Security projects, the TSA letter must be cited
3. ARFF vehicles, the airport’s ARFF Index must be cited
4. ARFF buildings or SRE storage buildings, the number of eligible pieces of equipment (corresponding to the eligible space needs) must be cited
5. Noise mitigation projects where there is no approved Part 150 plan, the local plan that establishes eligibility must be cited along with a statement that the FAA has reviewed the plan and it would be approvable under a Part 150 analysis.
6. Other projects where the AIP Handbook, FAA Order 5100.38, mandates that eligibility be established in a particular way, the FAA’s comments must explain how the projects meet those requirements.
7. Terminal facilities such as baggage facilities (both incoming and outgoing), gates and loading bridges, hold rooms, and ticket counters, the facility’s leasing arrangement must be described.

8. Terminal facilities eligible under 49 U.S.C. § 40117(a)(3)(F), the project must enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport. The public agency must provide the current market share of the air carrier or carriers at the airport benefitting from the project.
9. Ground access projects, the FAA's comments must describe if the project is for exclusive airport access and if it will be located entirely on airport property or airport-owned rights-of-way. For fixed rail access projects, the FAA's comments must address which criterion was used by the public agency to evaluate the eligibility of rail components of a through-track system.

5.3.5.1.3 **Objective.** An FAA finding that a project preserves safety, security, or capacity indicates that the project maintains the status quo at the airport, i.e., it is a rehabilitation or replacement project. The FAA's analysis must describe the status quo, for example the age and condition of the pavement that will be rehabilitated or the equipment that will be replaced.

An FAA finding that a project enhances safety or security indicates that there is a safety or security deficiency that it addresses. The FAA's analysis must describe the status quo and explain how the project will address the deficiency (the PFC Statute and Regulation limit what can be said about security requirements in a public document such as an Attachment B.)

An FAA finding that a project enhances capacity must include the FAA's analysis of the capacity problem at that airport. This analysis may have previously been done in an environmental or other FAA document; if so, that document must be cited (including page, section, and paragraph numbers if possible). The FAA must note if it concurs that additional demand does exist. If the public agency states that the capacity improvement will accommodate future demand, the FAA's analysis needs to discuss the likelihood of that future demand and the documentation provided by the public agency. An FAA finding that a project furnishes opportunities for enhanced competition among air carriers must include the FAA's analysis of how this project will affect the barriers to air carrier competition at the airport.

An FAA finding that the project will mitigate noise impacts resulting from aircraft operations at the airport must cite the documentation that supports this finding.

5.3.5.1.4 **Project Justification.** See Paragraph 4.2.2 for a detailed description of Project Justification. The FAA determines a project's 'adequate justification' by evaluating its cost-effective contribution to one or more of the PFC Regulation objectives (*see* 49 U.S.C. § 40117(d)(3), 14 CFR § 158.15(c). The justification must establish that:

1. The project meets the PFC Regulation objectives,
2. The project is cost-effective compared to other means to accomplish the objectives, and
3. Based on FAA guidance and informed opinion, the cost is reasonable when compared to the capacity, safety, security, noise, and competition benefits of the project. Such benefits may be quantitative or qualitative but must be clearly described.

The FAA's comments must specifically demonstrate the FAA's analysis with respect to these three points listed above. The FAA's comments under Justification must discuss the PFC objectives and the reasonableness of the cost of the project.

If the project is the result of an FAA inspection, advisory circular or other mandate, then the justification comments must say so. For example, if the project involves the acquisition of a new ARFF vehicle or the replacement of an existing vehicle, the FAA must cite the airport's ARFF Index and note that the vehicle is needed to meet the requirements of that Index. Similarly, the fact that a vehicle is included in the airport's Snow and Ice Control Plan must be cited when commenting on the justification for snow removal and ice control equipment. If a Part 139 inspection has determined that a pavement rehabilitation project is necessary, the Part 139 inspection report/letter must be cited. For new facilities, the comments must specifically address the public agency's rationale for the new facility and must explain the FAA's analysis of the public agency's need for that new facility.

- 5.3.5.1.5 **Significant Contribution.** PFC projects that must show significant contribution are approved on a case-by-case basis. The 'For FAA use' section in Attachment B must describe the status quo and explain how the project will address the identified deficiency.

An FAA finding that the project improves air safety or air security and meets a specific safety or security regulatory requirement indicates that there is a significant safety or security deficiency that this project addresses. PFC Statute and Regulation limit what can be said about security requirements in a public document such as an Attachment B.

An FAA finding that a project increases competition among air carriers must include the FAA's analysis of how this project will affect the barriers to air carrier competition at the airport. If the project is included in a competition plan, the FAA's analysis must include the appropriate citation.

An FAA finding that a project reduces current or anticipated congestion must include the FAA's analysis of congestion at that airport. This analysis may have previously been done in an environmental or other FAA document; if so, that document must be cited (including page, section, and paragraph numbers

if possible). If the public agency states that the project will reduce future congestion, the FAA's analysis must also discuss the likelihood of that future congestion and the documentation provided by the public agency to support its contention.

An FAA finding that the project will reduce the impact of aviation noise on people living near the airport must cite the documentation used to make this finding. If the project is not located in the current DNL 65 dB or higher noise contour, the FAA's explanation must include the specific information that resulted in the FAA's finding.

- 5.3.5.1.6 **Estimated Project Implementation and Completion Dates.** In general, the FAA's comments must discuss the reasons for the timing of the start and completion dates for a project. For example, if the public agency must wait for another action to take place before starting or completing the project, the FAA needs to note what that action is and the estimated dates of that action. In the case of land acquisition, the FAA needs to note if the public agency intends to acquire the land from willing sellers or as a result of eminent domain proceedings.

If a project includes multiple types of work, i.e., planning or design and construction or land acquisition and construction, the FAA's comments must explain to which element of the project the implementation date provided by the public agency applies.

- 5.3.5.1.7 **Estimated Use Application Submission Date.** The FAA's comments must describe any items that need to be completed before the use application can be submitted, such as NEPA, ALP or airspace actions, and feasibility studies. If known, the FAA's comments must provide the estimated schedule for the completion of these items.

- 5.3.5.1.8 **Air Carrier and Public Notice Comments.** A statement that the FAA concurs in the public agency's responses to outside comments is not adequate. Rather, the FAA's comments must provide an analysis of the issues raised by the air carriers and the public.

- 5.3.5.1.9 **Financing Plan.** This item may involve several findings:

1. Reasonableness of the total project cost: The FAA must explain its analysis of the total project cost and its reasonableness. One way that this can be done is by referencing the cost of similar, specifically identified, projects, regardless of how they were funded. In cases where project bids or completed costs are available, these provide the best basis for ascertaining that costs are reasonable.
2. Reasonableness of the PFC share of the total project cost: The FAA must demonstrate that the PFC share of the total project cost is commensurate with the project eligibility. For example, if the FAA has earlier

determined that the project is 75 percent PFC-eligible, the FAA's analysis must clearly point out that the PFC share is no more than 75 percent of the total project cost.

3. Adequacy of detailed cost information: The public agency must provide detailed cost information for projects as noted in Paragraph 4.3.13.1. The FAA's analysis of the detailed cost information must include the identification of any line items that have been determined to be partially eligible or ineligible and the reasons for those findings (such as cost escalation or the availability of contingency amounts).
4. AIP funding test: In addition to making the required finding, the FAA comments must identify what specific data support the finding, such as the "ACIP dated 7/1/09" or the "SOAR AIP grant history report dated 6/2/09."
5. Airside needs test: As with the AIP funding test, in addition to making the required finding, the FAA comments must identify what specific data support the finding, such as the master plan, Attachment A (i.e., CIP), Part 139 inspection findings, or other FAA findings (*see* 14 CFR § 158.17(a)(3)).

5.3.5.1.10 **Back-Up Financing Plan.** Many public agencies' back-up financing plans state that they will collect additional PFCs to cover any shortfalls in proposed AIP funding. In those cases, the FAA's comments must also estimate the additional duration of collection such a plan would require. If the back-up financing plan involves financing other than or in addition to the collection of additional PFCs, the FAA's comments must indicate if the public agency will need to obtain additional approvals, for example from the signatory carriers, to obtain that alternate financing.

5.3.5.1.11 **Airports District Office and Airports Regional Office Recommendation Section.** The FAA should ensure that it captures all items from its analysis from Paragraph 5.3.5.1.9 (1 and 2) above. If the FAA is recommending the partial approval of the project, it must repeat, paraphrase or cross-reference the analysis from earlier in the Attachment B where the partial approval decision was described.

5.3.5.2 **Attachment G Markup.** The Attachment G provides a simple format for the FAA to document all needed airport layout plan, airspace, and environmental findings for the projects included in a PFC application. The FAA Airports office must confirm the information provided by the public agency concerning these items is correct.

5.3.5.3 **Other Project Considerations.**

5.3.5.3.1 **FAD Language to Address Exceptional Circumstances.** The format and instructions with the Attachment B must be followed for each PFC

application. Some applications may require further review by APP-510, APP-400, ACO-100, and AGC-600 before the application is approved. In such cases, the FAD may need to be supplemented with language providing specific instructions to the public agency on the conditions that must be met for it to remain in compliance.

- 5.3.5.3.2 **Conditioned Approval of PFC Use Authority.** A project may be approved for use with a condition attached. For example, the public agency must provide additional information to the FAA before it expends any of the PFC revenue; or the public agency must immediately amend the amount of collection for that project to reflect any decrease in the amount approved.

Similarly, if the FAA knows when an FAD is issued that certain components of the project—such as administrative offices in a terminal, maintenance facilities for a rail project, or road segments leading to an ineligible parking structure—are a part of the overall description, the determination paragraph must clearly identify those components as ineligible. The FAA must also explain how the public agency proposed to fund those ineligible components.

- 5.3.5.3.3 **Further Conditions for Certain Impose-Only Projects to Aid Justification in the Use Application.** Some impose-only projects, while clearly intended to meet a PFC objective, are unavoidably indeterminate in scope, and only nominally eligible. Under certain circumstances, these projects may be approved for impose-only authority with special conditions that must be addressed before use authority may be approved. An example of such a project is a large terminal rehabilitation or construction project that has not yet completed the detailed plans for its construction. The FAA may request that the public agency meet specific conditions, listed in the determination, to aid in the project justification. These conditions will usually include: the requirement that the public agency consider alternatives to the development described in the project, including alternatives presented by air carriers; reconsidering the costs of these alternatives; phasing in development related to demand forecasts; and reviewing traffic projections and other supporting planning materials to determine the timing and scope of the proposed project. Such conditions must be resolved before the FAA can approve the project for use.

- 5.3.5.3.4 **Project Decision Deferrals and the Issuance of Supplemental PFC Decisions.** In limited circumstances when the FAA determines that project disapproval may not be in the public interest (such as when a problematic project or projects prevent the FAA from issuing a favorable decision for a whole application), the FAA may decide to defer the consideration of such projects until the issues are resolved. The FAA would issue its decision on all other projects, as well as the general determinations in its FAD, while indicating that consideration of the projects at issue would be deferred, with a brief description of the issue. The FAA's decision must explain the reduced approved amount and shorter duration of collections. In addition, the FAA

must outline specific steps that the public agency must take for the FAA to reconsider the problematic projects. The issuance of a PFC decision with a project deferral may allow the public agency to continue to collect PFC revenue while it resolves issues with problematic projects.

Once the public agency has resolved the issues with the deferred projects, it must notify the FAA in writing that it wants the FAA to reconsider the deferred projects. Such reconsideration starts a new review process for the projects, but a new application package may not be necessary. The public agency may, however, submit new information for the FAA to consider. Such a re-submittal may require an additional notice and consultation with air carriers as well as a new public notice.

Upon receipt of the public agency's written request and any supplemental information, the FAA will review the deferred projects and issue its decision. Such a decision is considered to be a *Supplemental Final Agency Decision*. Supplemental FADs will be issued in the same manner as regular FADs and will carry a new application number separate from the number issued for the initial application.⁴⁴

5.3.6 FAA Decision

5.3.6.1 Preparation of the Final Agency Decision (FAD).

5.3.6.1.1 Format, Timing and Approval/Disapproval Documents.

1. **Format for Project and Application Approval or Disapproval in FADs.** The PFC web site [Airports PFC Program](#) contains the formats and instructions to use to document the review of each project in the application and of the application as a whole.
2. **Timing and Content of Recommendation Package for Non-Delegated Decisions.** No later than 60 days before the 120-day decision date, the FAA Airports office must submit to APP-510 a copy of the recommendation form, along with the FAA-completed Attachments B and G. If a notice was issued in the *Federal Register*, all comments that were received in response must be submitted to APP-510.
3. **Approval or Disapproval Documents.** The FAA Airports office will prepare the approval or /disapproval documents for delegated decisions; APP-510 will do so for non-delegated decisions.

5.3.6.1.2 Procedural History. The procedural history describes the steps followed by the public agency and the FAA before the final agency decision and the dates for each step. These steps include the air carrier consultation meeting, public notice posting, application receipt, and substantial completion finding. If a

⁴⁴ The process outlined above does not apply to public agencies under the non-hub process.

Federal Register notice has been issued for the application, the date that the notice was issued and the date that the comment period was closed must also be listed.

- 5.3.6.1.3 **PFC Level, Amount, and Charge Effective Date.** This section of the FAD describes the PFC level and the total amount of net PFC revenue approved in the decision and gives the earliest date that the charge can be effective. The section also describes that the charge effective date is based on the expiration date of the previous application and may change if that expiration date changes, to avoid a cessation in collections. Additionally, the section describes the required 30-day notice to air carriers and foreign air carriers. See Section 5.4 if the PFC level is set above \$3 for Large and Medium Hub airports.
- 5.3.6.1.4 **Duration of Authority (i.e., Charge Expiration Date).** This section of the FAD establishes the legal charge expiration date for the PFC decision. The date provided by the public agency must be carefully reviewed before including it here. If the public agency has requested a charge expiration date that provides for a longer collection period than is supported by the information in its application, the FAA must establish a shorter period and an earlier expiration date. However, the FAA cannot approve a longer collection period than has been requested by the public agency if it finds that the expiration date does not provide for the amount necessary to fund the projects in the application. In such cases, the public agency may later elect to extend its collection period by notice (*see* Section 7.3).
- 5.3.6.1.5 **Decision Summary Table.** After general information, the FAD shows the FAA's public record of PFC actions (decisions and amendments) over the full history of the airport's PFC program. It is critical that this history reflect all PFC decisions and amendments. SOAR contains a report that can be used to generate this history, but the SOAR report needs to be spot-checked against recent decisions and amendments to ensure its accuracy.
- 5.3.6.1.6 **Administrative Amendment.** In a limited number of decisions, the FAA will need to include an administrative amendment to a previous PFC decision within the body of the current decision, right after the decision summary table. In most cases, an administrative amendment would be needed when approving a project for use when the costs have changed since the impose approval (*see* Chapter 13).
- 5.3.6.1.7 **Application or Project Approval Determinations.** This section of the FAD contains general approval determinations for the application and projects. It also outlines the FAA's statement of its general expertise and its review of the application documentation. This is the section where the FAA issues its determinations on the amount and duration of the PFC; that the projects meet objectives, is eligible, and is justified; that projects at \$4.50 meet the additional requirements for such projects; that the collection process is

reasonable; that there are no violations of ANCA; that environmental requirements have been met; and that the net PFC revenue approved includes any debt service and financing.

- 5.3.6.1.8 **Specific Project Decisions.** Each project included in the public agency's application must be addressed in detail in the FAD, regardless of its disposition. In each case, the decision must include the public agency's title for the project and the amount approved for the project, broken down by type of funding (pay-as-you-go, bond capital, and financing and interest). The project description must closely reflect the description provided by the public agency. However, sometimes the FAA will need to provide additional descriptive information or to simplify the public agency's description. If this is done, the FAA must be careful not to include information that was not part of the application or was not generally available to the public at the time of the application. The description must be written so that someone who is not familiar with the airport will get a general understanding of the project and the purpose for undertaking the project.

In the determination section, the FAA must describe the required determinations made for the project. First, the FAA must state the type of approval. Then, the FAA must describe how it determined significant contribution (if required), the PFC objective, the basis for eligibility, adequate justification, the total estimated project cost, and the proposed sources of financing (including any AIP grants or proposed grants). If the FAA does not approve the PFC level requested in the application, it must explain why it did not approve the requested level.

1. For approvals, the FAA must explain how the project met the required criteria and note that the full requested amount has been approved.
2. For partial approvals, the FAA must explain why the project was approved in part, which parts were approved, and then note that the partial amount has been approved.
3. For disapprovals, the FAA must explain in detail why the project did not meet the specified criteria and note that the full requested amount has been disapproved.
4. For projects withdrawn by the public agency, the FAA must provide only minimal project information, the original requested amount, and a short statement that the project was withdrawn by the public agency at its request and the date of the withdrawal request.

All information in the project description and determination sections must be accurate and be based only on the information in the public agency's application or information generally available to the air carriers and the public. Although the FAA may request the clarification of information

received from the public agency at any time during the review process, the FAA is limited to using only information that has been available to both the air carriers and the public in making its PFC decision. Therefore, the FAA must carefully document any such request, and the public agency's response, in the official file. The public agency should not use such a request as an opportunity to present additional arguments, including new justifications. If the public agency submits a new justification, rather than the requested clarifying information, it may cause procedural problems that result in additional *Federal Register* comment periods (see *Air Transport Association v. FAA*, 169 F. 3d 1 (D.C. Cir., 1999)).

When drafting the decision, FAA offices must properly attribute text that is copied verbatim from a PFC application by placing the copied text within quotation marks and properly citing page or section numbers either within the text or as a footnote. Eligibility determinations must cite the correct paragraph number of FAA Order 5100.38 (most recent edition).

- 5.3.6.1.9 **Alternative Uses.** In the case of an impose-only application, the public agency must provide alternative uses for its collected PFC revenue if the impose-only projects are not later approved for use. If the alternative uses are additional PFC projects, these projects must have been discussed in the consultation with air carriers and included in the public notice. In many cases, a public agency will have sufficient collection authority from other applications to meet the alternative use requirement.
- 5.3.6.1.10 **Calculation of PFC Level.** The FAA's determination of the collection level for an application is straightforward if the projects have been approved at the same level. If some projects have been approved at different levels, the FAA must describe its calculation of the percentage of the total approved amount at the higher PFC level and show how that meets the threshold for collections at the approved level.
- 5.3.6.1.11 **Environmental Requirements.** The FAA must describe the environmental actions required under FAA Order 1050.1 Environmental Impacts: Policies and Procedures or 5050.4, NEPA Implementing Instructions for Airport Actions (most recent edition) and the disposition of each project according to these requirements. The FAA must also indicate if the Airport Layout Plan and airspace requirements have been met.
- 5.3.6.1.12 **Excluded Class.** The FAA must describe any class of air carrier that the public agency wants to exclude from the requirement to collect PFCs under 14 CFR § 158.11 as well as the FAA's review and response.
- 5.3.6.1.13 **Compliance with ANCA.** The PFC application cannot be approved if the airport for which the PFC will be imposed and collected has been found to be noncompliant with the Airport Noise and Capacity Act of 1990 (ANCA). An airport will have been found noncompliant through a formal action taken by

the FAA resulting in a termination of eligibility for AIP grant funds and to impose and collect a PFC. In addition, the PFC application cannot be approved if the FAA has made a preliminary written finding of ANCA noncompliance and has entered into an informal resolution process with the public, even if a formal determination of ANCA noncompliance has not yet been reached. In such cases, the FAA will advise the public agency that it is unable to approve the PFC application at the end of the 120-day PFC decision period. The public agency would then be given the option of granting the FAA an extension to the 120-day PFC review period until the ANCA issue is formally resolved. If such an extension is not granted, the FAA would disapprove the application by stating in the ANCA section of the FAD that it could not make a determination that the public agency is in compliance with ANCA (see 14 CFR 161.501-505).

A PFC application can be approved at the end of the 120-day PFC review period while the FAA and the public agency are in discussions about potential ANCA compliance issues, provided there has not yet been a preliminary finding of non-compliance with ANCA under. In this case, the FAD shall identify the potential ANCA compliance issues and how the public agency plans to address them. If the public agency is subsequently found to be in violation of ANCA, the public agency may lose its authority to impose and collect PFC revenues.

5.3.6.1.14 Revenue Diversion. If a PFC application is under review while the FAA and the public agency are working to resolve revenue diversion issues, the FAA Airports office and APP-510 will coordinate the release of the FAD with ACO-100 and AGC. Unless there is a formal determination of revenue diversion, a FAD approving collection authority may be issued (assuming all other conditions of approval are met) at the end of the 120-day PFC decision period. The FAD must identify the outstanding airport revenue compliance issues and how the public agency is working with the FAA to resolve the compliance issues. In the case of a use-only PFC application, since the public agency is not requesting the collection of PFC revenue, this type of PFC decision is not subject to disapproval under the revenue diversion provision even if there is a formal finding of non-compliance. The FAA is barred from approving new PFC collection authority only when a public agency has violated subsection 49 U.S.C. § 47107(b), which governs the use of airport revenue.

5.3.6.1.15 Competition Plan. This section is included in the FAD only if the application is for a covered airport under the Competition Plan requirements in 49 U.S.C. § 40117(k). If required, the FAA must describe how the public agency has met this requirement, including the date of the approval of its competition plan.

5.3.6.1.16 Disposition of Air Carrier, Public Notice, and *Federal Register* Comments – Treatment of Adverse Comments. Adverse comments

generally discuss a project's eligibility, objectives, or justification. Challenges to the project's merits on any of these grounds must be carefully checked against the direction provided in this Order (*see* Section 3.2 and Section 3.3). The FAA must also review any evidence that any project being considered for use authority has not obtained the required environmental, airspace and ALP approvals or has not met any other requirement of the PFC Regulation.

If the comments demonstrate that a use project has not reasonably met any of the requirements of the PFC Regulation, and review of information contained in the application (subject to clarification by the public agency) confirms this, the use project in question cannot be approved in the FAD. An impose-only project that does not meet the eligibility, objectives, or justification requirements must also be disapproved. However, if there is disagreement about the merits of the objective (or justification of an impose-only project that might be clarified with additional information), the FAA must include a requirement in the FAD that the public agency provide additional specific analysis or justification with the use application.

Particular attention should be given to evidence that a facility will be leased on exclusive use terms to an air carrier. The lease in question must be carefully examined to determine if it meets the requirements of Assurances 5, 6, 7, and 8 of the PFC Regulation. The FAA must review any lease pertaining to facilities funded wholly or in part with PFC revenues, either directly or through bonds that will be repaid in whole or in part with PFC revenues.

In some cases, adverse comments may be made about projects that are not directly used by air carriers or their passengers and employees. For instance, air carriers frequently object to the funding of cargo or general aviation facilities and the funding of international projects in proportions that exceed the international passenger share of total traffic. The use of PFC funds for cargo, general aviation, or international facilities is permitted by the statute and regulation. Moreover, there is no requirement in the statute or regulation that PFC funds be allocated to projects in proportion to the number of PFC-paying passengers that use them.

In other cases, comments may be submitted that oppose the funding of a project meeting one PFC objective because the commenter believes that another project that would meet a different PFC objective should be given higher priority. In such cases, the FAA must note in the FAD that the application of PFC funds by a public agency to projects meeting one class of objectives, in preference to other PFC objectives, is fully within the discretion of the public agency. In other words, the FAA can and must approve a project that preserves or enhances capacity even if the project yields no measurable increase in competition. However, the FAA, as a general principle, will not permit a project to proceed by satisfying one PFC objective if that project would obstruct any other PFC objective. If a project has been alleged to be

anti-competitive, the FAA must explicitly investigate such charges. The finding that a project works substantially against any PFC objective, particularly competition, would lead to its disapproval.

In the case of PFC levels above \$3, a comment that a landside project is being funded in preference to an unfunded airside project, regardless of the objective of either project, must be investigated in consideration of the requirement that the public agency certify that its airside needs have been met when funding a landside project.

The FAA Airports office that is issuing the FAD must fully describe and address all comments opposing a project, including all comments in response to a notice in the *Federal Register*. All comments supporting a project must be summarized but need not be analyzed in detail.

- 5.3.6.1.17 **Legal Authority and Signature.** This section of the FAD describes the FAA's authority for its decision, details the projects approved, and outlines the public's appeal rights. It is also where the approving official signs the decision (concurrence or non-concurrence).
- 5.3.6.2 **Preparation of Transmittal Letter.** The FAA's transmittal letter for the FAD provides a general description of the approvals, partial approvals, and disapprovals (if any) in the attached FAD. It also identifies excluded classes, if any, and provides guidance on how to treat airport bonds that receive PFC funding. Finally, it alerts the public agency to its reporting, recordkeeping, and auditing requirements; its project implementation requirements; and encloses a list of advisory circulars that the public agency must follow. Any conditions affecting the PFC decision must be in the FAD rather than in the transmittal letter, but the transmittal letter can and should highlight the presence of such conditions and indicate where they are located in the FAD.
- 5.3.6.3 **SOAR Entries.** The FAA Airports office that issues the FAD must complete all necessary SOAR entries after it issues the FAD. These entries must be completed within 24 hours of the approval, or as close to that timeframe as possible, to ensure the timeliness of notifications to the air carriers and the public. For decisions that are issued near the end of a month, the information must be uploaded and input into SOAR no later than three working days before the end of the month to be included in the monthly notice; if this cannot be done, the Airports office must notify and make arrangements with APP-510. Prompt reporting ensures that all PFC actions can be captured in the FAA's reporting to the air carriers and the public.
- 5.3.6.4 **Public Agency Notice.** In accordance with 14 CFR 158.43, the public agency must notify the air carriers required to collect PFCs at its airport of the FAA's approval. Each notified carrier shall notify its agents, including other issuing carriers, of the collection requirement.

5.3.6.4.1 The notification shall be in writing and contain, at a minimum, the following information:

1. The level of PFC to be imposed
2. The total revenue to be collected
3. The charge effective date, which will always be the first day of a month; however, it must be at least 30 days after the date the public agency notified the air carriers of the FAA's approval to impose the PFC
4. The proposed charge expiration date
5. A copy of the Administrator's notice of approval
6. The address where remittances and reports are to be filed by carriers

5.3.6.4.2 The public agency must notify air carriers that are required to collect PFCs at its airport and the FAA of changes in the charge expiration date at least 30 days before the existing charge expiration date or new charge expiration date, whichever comes first (14 CFR §158.43(c)). Each notified air carrier must notify its agents, including other issuing carriers, of such changes.

5.3.6.4.3 The public agency must provide a copy of the notification to the appropriate FAA Airports office.

5.3.7 Notification of Approval or Disapproval.

5.3.7.1 **Written Notice to Public Agency for Non-Delegated Decisions.** APP-510 will transmit, via fax, email or other means, a copy of the signed letter of transmittal and FAD to the public agency and the regional PFC contact. APP-510 will then mail the original signed transmittal letter, FAD, and related enclosures to the public agency and upload a copy of the signed decision into SOAR as soon as possible after signature (within 24 hours).

5.3.7.2 **Written Notice to the Public Agency for Delegated Decisions.** The FAA Airports office will upload a copy of the signed decision into SOAR as soon as possible after signature (within 24 hours). The responsible FAA Airports office will then send the original signed transmittal letter, FAD, and related enclosures to the public agency.

5.3.7.3 **Federal Register Notice.** APP-510 publishes a monthly notice of all PFC approvals, disapprovals, and amendments in the *Federal Register* as required by regulation.

5.3.7.4 **Judicial Review of the Final Agency Decision.** The FAA's decision is made under the authority of 49 U.S.C. §§ 46110 and 40117. The decision constitutes a final agency order approving, in whole or in part, the public

agency's application for authority to impose and/or use PFC revenue for projects at the airport. Any party to the proceeding having a substantial interest may appeal the decision to the United States Court of Appeals for the District of Columbia or the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed within 60 days after the issuance of the decision.

The responsibility for responding to the petition and compiling the certified index of administrative record will remain in the FAA office signing the FAD in cooperation with the Assistant Chief Counsel that provides legal support to that office.

- 5.3.7.5 **Final Agency Decision Database.** FAA PFC decisions for medium and large hub airports will be posted to a new page (currently under development) on the FAA Airports website. FAA Airports offices must provide APP-510 with copies of all signed final decisions for medium and large hub airports. APP-510 will post the decisions to the web page.

Section 5.4 Setting the PFC Level Above \$3 at Large and Medium Hub Airports

- 5.4.1 **General.** The PFC collection level is determined in the FAA decision document for the PFC application or amendment, based on the project information included therein. This section provides direction on establishing the PFC level above \$3 at large and medium hub airports. This procedure applies both to a single application with multiple projects, and to the commingling of collection authority (also known as "blending") of consecutive applications, either all existing authority or a combination of existing and new authority, into a single new application for the purposes of establishing/maintaining PFC collection authority at a level above \$3.

This section is not applicable to small hub and non-hub airports; PFC level determination for these airports is based solely on the level requested in the public agency's application; NOI on amendment.

5.4.2 Setting PFC Levels.

- 5.4.2.1 **PFC Levels Above \$3.** An airport may charge only one PFC level at a given time. If a public agency has only one approved application, and all of the projects in that application qualify at the same PFC level, the selection of the appropriate PFC level is clear. However, it is often the case that projects in one or more applications may qualify at different PFC levels; determining the appropriate collection level in these cases requires some analysis.

The FAA has established a policy that allows public agencies to collect at the \$4 and \$4.50 levels for the entire authorized collection period for an application, even though some projects may only qualify at the lower \$3 level. Specifically, the policy allows for the public agency to collect the total value of an application at \$4 if at least 25% of the total application value is composed of projects that meet the significant contribution requirement;

similarly, the public agency can collect the total value of an application at \$4.50 if at least 33% of the total application value is composed of projects that meet the significant contribution requirement. These same 25% and 33% thresholds apply to blending decisions as well, except that the value of the \$4 or \$4.50 projects is instead compared to the total value of the uncollected PFCs for all projects in the applications to be blended.

5.4.2.2 Setting the PFC Level for a Single Application with Multiple Projects. FAA will use the following procedures to set a \$4 or \$4.50 PFC level for a multiple project application or amendment.

5.4.2.2.1 Setting the PFC Level When the 25% or 33% Threshold is Met. If the value of the projects approved for a \$4 or \$4.50 PFC is at least 25% or 33% threshold, respectively, as a percentage of the total application value, the FAA will authorize the collection of a \$4 or \$4.50 PFC, respectively, for the entire collection period.

5.4.2.2.2 Setting the PFC Level When the 25% Significant Contribution Threshold is NOT Met. If some projects in an application qualify at \$4 or \$4.50 by meeting the significant contribution requirement, but the value of these projects as a percentage of total application value is less than the 25% threshold, the FAA will set the PFC at a \$3.00 collection level.

The FAA will offer the public agency the opportunity to withdraw its request for a higher PFC, if the PFC level is less than what the FAA can approve for the whole application, just as the public agency is now free to withdraw projects from an application before the FAA issues its decision.

In FAA's Order 5500.1, Passenger Facility Charge, dated August 9, 2001, FAA considered allowing two separate collection levels in one application (or a "mixed-level" authority). Because of the administrative burden to all parties associated with mixed-level collections, the FAA did not approve any applications of this type, therefore, will not consider mixed level authority in the future.

5.4.2.2.3 Examples of the Calculation of PFC Level for Single Applications.

Example 1: A public agency submits a PFC application in which it seeks to impose a PFC of \$4.50. The application consists of four projects. The public agency seeks the authority to collect \$25 million in PFCs for the first project and \$15 million for each of the other three projects. The FAA's review of the application shows that the \$25 million project does not meet the significant contribution requirement and so does not qualify for a PFC of \$4.50, but that the other three projects (with a combined cost of \$45 million) do qualify at the \$4.50 level. Since the value of projects that qualify for the \$4.50 PFC level makes up at least 33% of the total application value (\$45 million divided by \$70 million of total application value, or approximately 64%), the FAA would authorize the

public agency to collect a PFC of \$4.50 for the entire collection period in the FAD issued for that application.

Example 2: A public agency has one active application with collection authority; the FAA's decision document approved collections for the application at the \$3 level. Three projects have been approved in the FAD, one at \$150 million, one at \$75 million, and one at \$50 million. The public agency submits an amendment to increase the PFC collection level for the application to \$4.50. The FAA's review of the amendment shows that the \$150 million project does not meet the significant contribution requirement and so does not qualify for the PFC of \$4.50, but that the other two projects (with a combined value of \$125 million) do so qualify. Since the value of projects that qualify for the \$4.50 PFC level makes up at least 33% of the total application value (\$125 million divided by \$275 million of total application value, or approximately 45%), the FAA would authorize the public agency to collect a PFC of \$4.50 for the remainder of the collection period in the decision document issued for the amendment.

5.4.2.3 Setting the PFC level for Multiple Applications with Multiple Projects (Blending). A public agency may have several approved applications containing multiple projects. The collection of PFCs for each application is authorized in the order in which the applications have been approved. Thus, the collection authority for an application begins once the collection authority for the previous application expires. In instances where applications have been approved at different collection levels, a public agency may want to prevent the PFC collection level from being reduced from \$4 or \$4.50 once collection authority under one application expires and begins with the subsequent application at a lower level. Additionally, a public agency may want to increase the PFC level for an approved PFC application to \$4 or \$4.50. These objectives can be accomplished by blending multiple applications with sufficient projects that qualify at the \$4 or \$4.50 level into a new blended application with its own FAD.

Blending may be initiated only by the specific request of the public agency. The request must be in connection either with the submission of a) a new application; or b) an amendment to an existing application. An amendment must be filed for each approved application that the public agency wants to blend.

The blending of existing applications into a new application is intended to provide the benefit to public agencies and air carriers of avoiding changing PFC collection levels at airports with multiple applications. Approving a blended application will impose additional administrative burdens on the FAA and the public agency. Consequently, requests for application blending will not be approved unless it is determined that the request will in fact provide the intended benefit of establishing a consistent PFC level.

The public agency must specifically request blending in its consultation with air carriers and the public for both amendments and new applications. It is prudent

for the public agency to consult with the FAA Airports office before initiating airline consultations to ensure that, between the existing/new applications proposed to be blended, sufficient value exists in projects that should qualify for a \$4 or \$4.50 PFC to support undertaking the application blending process.

Only immediate preceding consecutive applications can be blended. The preceding consecutive applications cannot include a previously blended decision. FAA must advise the public agency to limit the number of preceding consecutive applications to no more than two given the complicated administrative nature of blending.

Blended PFC applications will *not* be delegated for regional approval. The blended applications will be combined in a single decision with a new FAD. The FAD will specifically identify the applications being blended, as well as any applications that the FAA has determined must remain separate.

If the charge effective date for a new blended application is close to the required implementation date for an existing project that has not yet been implemented that is proposed to be in the blended application, the FAA Airports office must verify with the public agency that the project is expected to be implemented by the required date. If there is a substantial likelihood that the project will not be implemented in a timely manner, the project may not be suitable for inclusion in the new FAD; the FAA Airports office must contact APP-510 regarding the disposition of such a project

5.4.2.3.1 Amending an Existing Application to Combine Projects from Previous Applications. The public agency may submit an amendment to blend a current application and one or more subsequent applications to maintain a higher PFC. The remaining PFC collection authority for all projects in the applications being combined would be transferred to the new combined application with a blended decision. Therefore, the public agency must ensure that the applications to be combined have sufficient value in projects that qualify at the \$4 or 4.50 PFC level in order to permit the application to collect at that level for the entire collection period.

In the case of an amendment to blend an application for which PFCs have already been collected at the \$3 level, the FAA defines value as the remaining collection authority for each project. To determine this value, the FAA will allocate the collections already received on a pro-rated basis to all projects within that application, regardless of any other allocation shown in the public agency's quarterly reports. Thus if, as of the charge effective date for the new blended application, a public agency has collected 50% of its collection authority under an application consisting of two projects, with one project initially approved for \$30 million in PFC authority and the other project for \$10 million, the FAA would determine that \$15 million in collection authority remained for the former project and \$5 million remained for the latter.

If approved, the FAA would create a new decision, consisting of the projects in the applications to be blended. The FAA would simultaneously process an administrative amendment to close out the previous application(s) being blended. If the application under which the public agency is currently collecting PFCs is one of the applications to be blended, it would not be deleted until the 30-day notification time frame has been completed and collection under the new blended application begins. The authority for PFC collections for each application to be blended would be transferred to the new application. For any application for which PFCs have already been collected, that amount would be noted in the duration of collection and the charge expiration date for the new application, which will reflect the total amount approved for collection less the amount of PFC revenue already collected.

- 5.4.2.3.2 **Submitting a New Application That Combines Projects from Previous Applications.** The public agency may request that an existing application be blended with a new application to establish a higher PFC if the projects within either application do/would not qualify for the higher PFC. The public agency should submit the new application as well as an amendment for the existing application to request that the FAA blend the existing application with the new application.

The remaining PFC collection authority for each project in the applications being blended would be transferred to the new application, including the projects that do not qualify for the higher PFC. Therefore, the public agency must ensure that applications to be combined have sufficient value in projects that qualify at the \$4 or 4.50 PFC level in order to permit the application to collect at that level for the entire collection period. In the case of an amendment to blend an application for which PFCs have already been collected at the \$3 level, the FAA will allocate the collections already received on a pro-rated basis to all projects within that application, regardless of any other allocation shown in the public agency's quarterly reports. In addition, the required original project implementation date(s) must be retained in the new blended application for any project(s) in an existing application that has not yet been implemented.

If approved, the FAA would create a new decision, consisting of the projects in the new application and the existing applications to be blended. The FAA would simultaneously process an administrative amendment to close out the previous application(s) being blended. If the application under which the public agency is currently collecting PFCs is one of the applications to be blended, it would not be deleted until the 30-day notification time frame has been completed and collection under the new blended application begins. As part of the air carrier notification process, the public agency must inform the air carriers that some of the projects in the FAD had been previously approved. The authority for PFC collections for each application to be blended would be transferred to the new application. For any application for which PFCs have already been collected, that amount would be noted in the

duration of collection and the charge expiration date for the new application, which will reflect the total amount approved for collection less the amount already collected.

5.4.2.3.3 **Examples of the Calculation of PFCs for Multiple Applications.**

Example 1: A public agency has one approved application and plans to submit a new application. The public agency submits an amendment to increase the PFC level for the existing application to \$4.50 (from the approved \$3 PFC) and also requests a \$4.50 PFC in the new application. The approved application under which the public agency is currently collecting PFCs, has two projects, both implemented, each with authority for \$70 million. Based on the most recent quarterly revenue report submitted by the public agency, the FAA estimates that at the new charge effective date authorizing a \$4.50 PFC, half of the authorized amount of the approved application will have already been collected. The new application has three projects at \$50 million each. The FAA's review of the amendment shows that the two \$70 million projects in the approved application do not qualify for a \$4.50 PFC, but that the three \$50 million projects in the new application do so qualify.

In the case of the approved application, half of the PFC authority remains uncollected; thus, \$70 million in non-qualifying authority remains. The new application has \$150 million in qualifying value. Since the value of projects that qualify for the \$4.50 PFC level makes up at least 33% of the total blended application value (\$150 million divided by \$220 million of total new application value and uncollected authority, or approximately 68%), the FAA will blend the projects from the first application into the new application. Although the total PFC cost of all of the projects in both applications (\$290 million) would be included in the new blended application, only \$220 million in new collections (all at \$4.50) would be authorized.

Example 2: A public agency has two approved applications and wishes to increase its PFC collection level to \$4.50 PFC. As such, it submits amendments to increase the PFC level to \$4.50 for both approved applications. The first approved application, under which the public agency is currently collecting PFCs, has two projects, both implemented, each approved at the \$3 level and each with authority for \$50 million. Based on the most recent quarterly revenue report, the FAA estimates that half of the authorized amount of the first application will have been collected by the new charge effective date for a \$4.50 PFC. The second application, under which the public agency is not yet collecting revenue, has two projects, each approved at the \$4.50 level and each with authority for \$75 million.

Since the value of projects that qualify for the \$4.50 PFC level makes up at least 33% of the total blended application value (\$150 million divided by \$200 million of total remaining collection authority, or 75%), the FAA will blend the projects from the existing applications into the new application.

Example 3: A public agency has two approved applications for which it requests the authority to collect a \$4.50 PFC. The first approved application, under which the public agency is currently collecting revenue, has two projects, each with authority for \$40 million. Based on the most recent quarterly revenue report, the FAA estimates that half of the authorized amount of this approved application will have been collected by the new charge effective date for a \$4.50 PFC. The second approved application has two projects, one with authority for \$30 million and one with authority for \$10 million. In this example, assume that all four projects have been implemented. The public agency submits Type B amendments to increase the PFC to \$4.50 for both approved applications. The FAA's review of the amendments shows that the two \$40 million projects in the first approved application do not qualify for a \$4.50 PFC and that the \$30 million project in the second approved application so qualifies.

Since the value of projects that qualify for the \$4.50 PFC level does not make up at least 33% of the total blended application value (\$30 million divided by \$120 million of total new application value and uncollected authority, or approximately 25%), the FAA cannot blend the projects from the two applications into a new application that would collect at the \$4.50 level. However, since the value of projects that qualify for the \$4.50 PFC level does make up at least 25% of the total blended application value, the FAA can blend the projects from the two applications into a new application that would collect at the \$4.00 level.

Alternatively, the FAA could evaluate the amendments independently (as non-blended applications), approving a \$4.50 PFC for the second application while leaving the first application at a \$3 PFC. The charge effective date for the \$4.50 authority in the second application would be at the charge expiration date from the first application. If the public agency has not specified how the FAA should treat the applications if the \$4.50 threshold was not met, the FAA would evaluate the amendments independently.

Example 4: A public agency is submitting a new application and has two approved applications. It requests \$4.50 authority for all three. The first approved application, under which the public agency is currently collecting PFCs, has two projects, both implemented, that have been authorized at \$75 million. Based on the most recent quarterly revenue report, the FAA estimates that half of the authorized amount of the first approved application will have been collected by the new charge effective date for a \$4.50 PFC. The second approved application has two projects, both implemented (but not collected), that have been authorized at \$10 and \$90 million respectively. The new application has a single project at \$100 million.

In this example, the project in the new application is found to qualify for a \$4.50 PFC. The FAA's review of the outstanding applications shows that the two \$75 million projects in the first application qualify for a \$4.50 PFC, but that only the \$10 million project in the second application so qualifies. Since the value of projects that qualify for the \$4.50 PFC level makes up at least 33% of the total

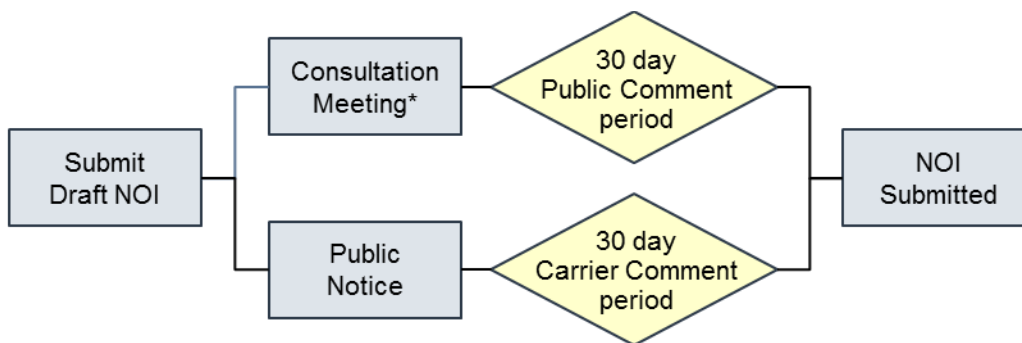
blended application value (\$185 million divided by \$275 million of total new application value and uncollected authority, or approximately 67%), the FAA will blend the projects from the first two applications into the new application.

Chapter 6. Notice of Intent Submittal, Review and Decision

Section 6.1 Overview

6.1.1 **General.** A public agency controlling a non-hub airport must notify the FAA of its intent to impose a PFC or use PFC revenue for a project.⁴⁵ The public agency may choose to use the standard application process or the streamlined Notice of Intent (NOI) process covered in this chapter.⁴⁶ Because the NOI process is streamlined, the FAA recommends that public agencies submit a draft notice to the FAA Airports office for review before formally submitting the NOI, preferably before the air carrier consultation. The following figure summarizes the NOI process.

Figure 6-1. Notice of Intent Process



*NOI for use of PFC revenue does not require Consultation Meeting

Section 6.2 Procedures for Public Agency Submittal

6.2.1 **Forms.** Public agencies that submit a NOI must use the same form as for a regular PFC application: FAA Form 5500-1, PFC Application (latest edition), but use; Attachment H, Project Information (latest edition) rather than Attachment B. The PFC application form and Attachment H are available at [Forms Airports](#).

The PFC Application Form and Attachment H must be used by all public agencies that submit an NOI. Failure to use the prescribed form will result in the FAA objecting to the proposed collection and/or use of PFC revenue. The public agency should contact the FAA Airports office to determine the number of hard copies of the NOI that are to be submitted to the FAA. The public agency must also submit an electronic version of Form 5500-1 and the associated attachments. FAA Airports offices that have regional

⁴⁵ Pub. L. 112-95, Sec. 111 made the Non-hub pilot program permanent. This fact has not been addressed in the PFC Regulation that still contains language referring to the Non-hub program as being a pilot program. The FAA will address this inconsistency when it undertakes an update to the PFC Regulation

⁴⁶ Certain types of projects are not eligible for an NOI. For example, requests for PFC funding to pay for debt service under the provisions of 49 U.S.C. Section 40117(b)(6) cannot be processed through an NOI because of the additional information that would be required on the financial need of the airport. In addition, certain complex projects, such as intermodal and multimodal projects, cannot be processed through an NOI. Non-hub airports must apply for these types of projects using the standard PFC application process.

oversight should contact their regional office to determine whether the region wants a hard copy or electronic version of the NOI.

6.2.2 Content Required for Notice of Intent. The NOI must contain the following items:

1. Transmittal Letter to the FAA (optional)
2. A completed FAA Form 5500-1, PFC Application (latest edition)
3. A completed Attachment H, Project Information (latest edition)
4. A completed Attachment C, consultation and public notice information, including the notice to air carrier; any letters received from the air carriers in response to the notice; a summary of the consultation meeting, including a record of attendees, and any air carrier certifications of agreement or disagreement received after the consultation meeting. A copy of the published public notice and any public comments received as a result of the notice must also be included
5. Proposed excluded classes of air carriers, if applicable (excluded classes for non-hubs are noted on the Attachment H)
6. Any additional information requested by the FAA

6.2.3 Timing of Submission.

6.2.3.1 General. Air carriers must have a 30-day comment period following the consultation meeting and the public must have a 30-day comment period after the publication of the public notice (*see* 14 CFR §§ 158.23 and 158.24). Therefore, a public agency may not submit an NOI to the FAA until at least 30 days after the consultation meeting or the publication of the public notice, whichever occurs last. In the case of an NOI for use of PFC revenue for which an air carrier consultation meeting is not required, the NOI can be submitted no sooner than 30 days after the written notice to the air carriers concerning the NOI, or the publication of the public notice, whichever occurs last. There is no regulatory time limit on submitting an NOI after the consultation and public notice, but FAA policy is that the NOI must be submitted within six months of the consultation and public notice. See Chapter 3 for details regarding consultation.

6.2.3.2 Subsequent Notices of Intent for the Use of PFC Revenue. For an impose-only project, once the FAA acknowledges an NOI to collect PFC revenue, the public agency has up to three years from the charge effective date, or three years from the decision date if the charge effective date is more than 60 days after the decision date, to submit an NOI to use PFC revenue for the project, see Table 5-1 for examples (14 CFR § 158.20(c)).

If the public agency has several impose-only projects, it may elect to file one combined use NOI or several separate use NOIs during that three-year time

frame. In addition, the public agency may request an extension for the time to submit an NOI for project use approval, if progress toward implementation of an impose-only project has been delayed for valid reasons (the extension must be approved by APP-510 and may be for up to two years, for a maximum impose-only time of five years (see Chapter 10). The FAA Airports office will assist the public agency in monitoring this requirement (see Section 9.3).

- 6.2.3.3 **Subsequent Notices of Intent to Impose-Only or Impose-and-Use PFC Revenue.** The public agency may submit a new NOI to impose-only or impose-and-use PFC revenue at any time. If the public agency wants to maintain PFC collections without interruption, the new NOI should be submitted at least 90 days before the expiration of the existing collections. Generally, public agencies should start the NOI process well before 90 days and may consider submitting the formal NOI 120 days before the expiration date to allow more time for review. The FAA may periodically notify the public agency of any apparent issues that may result in a break in collections, but the public agency should not rely on the FAA. The public agency should monitor the rate of collections and the estimated charge expiration date to prevent a break in collections. If the FAA Airports office becomes aware that the public agency plans to submit a subsequent NOI, they should advise the public agency that best practice is to begin work on the new NOI at least nine months before the current collections are projected to expire. This will allow for the orderly development of the NOI, the air carrier consultation and public notice processes, and FAA review and acknowledgement of the new NOI before the expiration of current collections.

Section 6.3 FAA Acceptance of Submittal

- 6.3.1 **FAA Receipt of Notice of Intent.** The FAA Airports office must date stamp, or write the date of receipt in the appropriate box on the application form, on the day the document is received. In those FAA Regions with Airports District Offices, the Airports District Office must follow established regional procedures in transmitting a copy of the NOI to the Regional Office.
- 6.3.2 **Determination of Correct Process.** The FAA Airports office must determine if the correct PFC process has been used; for example, there are no projects or requests in the NOI that need to be submitted as an application rather than as an NOI (*see* footnote referenced in Paragraph 6.1.1 for projects not eligible for inclusion in NOI).
- 6.3.3 **Notice of Intent File.** The FAA Airports office must create a file that contains all documents pertinent to the NOI. The file must include documents ranging from official correspondence to or from the FAA leading up to the submittal of the NOI, through PFC closeout. At a minimum, the NOI file must include the following information (document sources or references are indicated):

1. NOI, including attachments

2. Review Checklist for Non-Hub Notices of Intent
3. Review Worksheet for Projects in an Existing AIP Grant
4. Review Worksheet for Projects Not in an Existing AIP Grant
5. Additional information or clarification requested from the public agency requested by the FAA Airports office
6. FAA Letter of Acknowledgement or Letter of Objection (*see* Paragraph 6.1.1)
7. Documents associated with any amendments or notifications to collect PFCs (a 43c action) for the NOI
8. Documents associated with any extension of time to submit a NOI to use PFC revenue (for any impose-only projects; *see* Chapter 10)
9. Documents associated with any termination proceedings (*see* Chapter 15)
10. Public agency annual audits, if requested (*see* Chapter 16)
11. Signed closeout project completion certification (*see* Chapter 14)
12. Signed PFC application closeout report (*see* Chapter 14)

Files for NOIs that the FAA has objected to must contain the information in items 1 through 6 in the list above. The NOI file must be maintained and disposed of in accordance with the current PFC Records Disposition Agreement. Assurance 10 requires the Public Agency to retain records for auditing purposes for three years after NOI closeout (*see* Appendix C).

6.3.4 **Initial SOAR Entries.** Upon receipt of the NOI from the public agency, the FAA Airports office must enter the following information in FAA's System of Airports Reporting (SOAR) and show the NOI as pending:

1. Public notice, notice to carriers, and consultation dates
2. NOI received date
3. Proposed excluded classes of carriers
4. Project information, including project title, project type, project code, use airport, PFC level, PFC objective, project funding sources, and physical implementation and completion dates.
5. ADO Representative (Project/Program Manager or PFC Specialist)

Section 6.4 Project Analysis

6.4.1 Attachment H Markup. The FAA Airports office must complete page 5 of the NOI Attachment H, Project Information, which consists of the following findings for each project proposed to be funded at a PFC level above \$3, adding any appropriate FAA comments.

1. The project meets the requirements of Section 158.17(a)(2), the ‘AIP funding test.’ The FAA Airports office must review the FAA’s Airport Capital Improvement Plan (ACIP) and other available information to determine if the project costs cannot be paid from funds reasonably expected to be available from AIP.
2. Any surface transportation or terminal projects meet the requirements of Section 158.17(a)(3), the ‘airside needs test.’ The FAA Airports office must review the airport’s Capital Improvement Plan (CIP), master plan, ALP and other available information to determine if the public agency has made adequate provisions for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

6.4.2 Completion of FAA Review Worksheets. The FAA Airports office must complete FAA Review Worksheets to document the FAA’s findings on each of the projects in the NOI. There are two separate worksheets: one for projects in existing AIP grants and one for projects not in existing AIP grants.

6.4.2.1 FAA Review Worksheet for Projects in Existing AIP Grants. For PFC projects partially funded by an existing AIP grant, the regulation does not require the public agency to provide a justification for the project, describe how it meets one of the PFC objectives, or provide a project schedule (*see* 14 CFR § 158.30(b)). Nor does it require the public agency to confirm ALP, airspace, and environmental findings for such projects so the FAA’s review of these projects is minimal (*see* 14 CFR § 158.30(b)). The FAA Airports office must review the following information in the Attachment H and make the appropriate notations on the review worksheet:

1. Verify that the project is in fact in an existing AIP grant, that the AIP amount shown for the project in the Attachment H is correct, and that the AIP and PFC project descriptions are consistent.
2. Determine if the total PFC amount proposed for the project is reasonable (*see* Paragraph 4.3.13.2).
3. If there is any air carrier or public disagreement with the project, determine if the public agency’s reasons for proceeding with the project are adequate.
4. Determine the appropriate PFC objective for the project and note it on the review worksheet. If the PFC objective cannot be determined from the

project title and any AIP information available, the FAA Airports office should request clarification from the public agency.

5. Determine if each project proposed at a PFC level above \$3 meets the requirements of Section 158.17(a)(2) and (3), the AIP funding and the airside needs test, if applicable. The airside needs test determination must be made after a review of any available planning documents, airport inspection and certification reports, and the airport's capital improvement plan.
6. Document in the NOI file, or otherwise verify and note on the review worksheet, that FAA determinations regarding project eligibility, adequate justification, and ALP, airspace and environmental requirements (for impose-and-use and use projects) were made during the review of the associated AIP grant applications.

6.4.2.2 FAA Review Worksheet for Projects Not in Existing AIP Grants. For PFC projects *not* partially funded by an existing AIP grant, the regulation requires that the public agency provide a justification for the project, describe how it meets one of the PFC objectives, and provide a project schedule (*see* 14 CFR § 158.30(b)). The public agency must also confirm ALP, airspace and environmental findings for those projects. The FAA's review of such projects is similar to its review of the projects in an application (*see* 14 CFR § 158.30(b)). The FAA Airports office must review the following information in the Attachment H and make the appropriate notations on the review worksheet.

1. Determine if the total PFC amount proposed for each project is reasonable (*see* Paragraph 4.3.13).
2. Determine if the public agency's selected PFC objective is appropriate for the projects (*see* Paragraph 4.2.4) and note the appropriate PFC objective on the review worksheet.
3. Determine if the public agency's project descriptions and justifications are adequate (*see* Paragraph 4.1.3 and 4.2.2) and summarize the justification on the review worksheet.
4. Determine if the proposed projects are eligible and cite the source for the eligibility determination on the review worksheet (*see* Paragraph 4.2.3).
5. Determine if each project proposed at a PFC level above \$3 meets the requirements of Section 158.17(a)(2) and (3), and the AIP funding and airside needs tests, if applicable. The airside needs test determination must be made after a review of any available planning documents, airport inspection and certification reports, and the airport's capital improvement plan (*see* Paragraph 4.3.16). Note the findings for each project on the review worksheet.

6. Determine if the public agency's project start dates meet the requirements of the regulation (*see* Paragraph 4.3.17).
7. If there is any air carrier or public disagreement with any project, determine if the public agency's reasons for proceeding with the project are adequate (*see* Paragraph 4.3.18).
8. For projects on which the public agency proposes to use PFC revenue, verify the selected NEPA, airspace and ALP findings and finding dates (*see* Paragraph 4.3.14).

Section 6.5 Notice of Intent Analysis

- 6.5.1 **General.** In addition to reviewing the individual projects proposed in the public agency's NOI, the FAA Airports office must review the following elements of the overall notice and complete the Checklist for Review of PFC Non-Hub NOI.

The FAA may request clarification of any information contained in the NOI at any time during the review process. A written record of any such request and the public agency's response to the request must be placed in the official file. The public agency must not use such a request as an opportunity to present new information, but only to provide clarification. The submission of new information, such as additional justification for a project, may require additional consultation with the air carriers and public notice. (*see Air Transportation Association of America v. Federal Aviation Administration*, 169 F.3d 1 (D.C. Cir. 1999)).

- 6.5.2 **Air Carrier Consultation and Public Notice.** The FAA Airports office must review the NOI to confirm the following:

1. Verify that the public agency has notified all of the carriers with a significant business interest at the airport. The latest official enplanement report from the Air Carrier Activity Information System (ACAIS), available in SOAR, must be used to assist in this verification. If the public agency did not notify one or more carriers with a significant business interest, it must provide an acceptable reason for not doing so, or the FAA must object to the NOI in its entirety.
2. Verify that the public agency included a copy of each air carrier certification of agreement/disagreement received as a result of consultation. If not, the FAA Airports office should contact the public agency to obtain copies. If the public agency still does not provide copies of the certification, the FAA must object to the NOI in its entirety.
3. Verify that the public agency provided notice to the public of its intent to impose a PFC or use PFC revenue. If it did not, the FAA must object to the NOI in its entirety.
4. Verify that the public agency included a copy of each response received as a result of the public notice. If not, the FAA should contact the public agency to obtain copies.

If the public agency still does not provide copies of the comments, the FAA must object to the NOI in its entirety.

6.5.3 Excluded Classes of Carriers. If the public agency proposes to exclude one or more classes of air carriers from the requirement to collect the PFC (49 U.S.C. § 40117(h)(3) and 14 CFR § 158.11), the FAA Airports office must:

1. Review the proposed classes to make sure they are acceptably defined and they are valid classes.
2. Review the latest ACAIS enplanement report and verify that the number of enplanements for each class of carrier being excluded does not exceed one percent of the total annual enplanements at the airport.
3. Review any air carrier or public comments with respect to the excluded classes of carriers and the public agency's reasons for proposing to exclude the classes despite any disagreement. Indicate on the checklist if the public agency's reasons are acceptable.
4. Indicate on the checklist if the proposed excluded classes are acceptable and valid, and if not, discuss the reasons why they are not valid.

6.5.4 Duration of Collection. The FAA Airports office must review the NOI to confirm the following:

1. Verify that the total amount of PFC revenue to be collected is the sum of the PFC amounts of the individual projects acknowledged, or partially acknowledged, in the NOI.
2. Determine the appropriate overall PFC level for the NOI.
3. Verify that the charge effective date is appropriate, based on the charge expiration date for the previous PFC application or NOI (if any). If the proposed charge effective date is not on the first of a month at least 30 days from the date that the FAA acknowledges the NOI, the FAA Airports office must object to the proposed date in the FAA's Letter of Acknowledgment and include an 'earliest permissible charge effective date' in its reason for objecting to the proposed date. If the proposed charge effective date is earlier than the charge expiration date of the previously approved or acknowledged collections, the FAA Airports office must object to the public agency's proposed date and include an 'earliest permissible charge effective date' in the Letter of Acknowledgment that is the same as the expiration date of the previously approved or acknowledged collections, provided this date is on the first of a month at least 30 days from the date the FAA acknowledges the NOI. If the proposed charge effective date is later than the charge expiration date of the previously approved or acknowledged collections, the FAA Airports office cannot acknowledge an earlier charge effective date to prevent a break in collections; the FAA cannot acknowledge a charge effective date that is earlier than that proposed by the public agency.

4. Verify that the charge expiration date will not result in the collection of PFC revenue in excess of that needed to fund the proposed projects, based on the amount of total revenue to be collected and the public agency's estimate of the rate of collections. As a check, if the public agency is currently collecting PFC revenue, the estimated duration of collections can also be calculated based on the current rate of collections. The current rate of collections can be determined from reviewing the data in the PFC revenue screen of the public agency quarterly reports page of SOAR.

Section 6.6 Letter of Acknowledgment or Objection

6.6.1 Preparation of Document. No later than 30 days after receiving the NOI from the public agency, the FAA Airports office must prepare and send a Letter of Acknowledgement (LOA) or Objection (LOO) to the public agency (14 CFR § 158.30(e)). The letter must contain the following information:

1. The acknowledged PFC level, total amount of PFC revenue to be collected or used, charge effective date, and charge expiration date, and a discussion of any objections to any of these items.
2. Lists of projects that are acknowledged, partially acknowledged, or objected to (with separate lists for impose-only, impose-and-use, and use projects).
3. An explanation of the FAA's reasons for its decision for each project that is partially acknowledged or objected to, or an explanation of the FAA's reasons for objecting to the NOI as a whole, if applicable.
4. List of any withdrawn projects and the dates they were withdrawn.
5. The acknowledged excluded classes of carriers or an explanation of the FAA's reasons for objecting to any of the proposed excluded classes.
6. The FAA's responses to any certifications of disagreement or negative public comments that the public agency received during the carrier consultation and public comment period.
7. Reporting, charge effective date, project implementation, and compliance with assurances paragraphs.
8. The signature of the FAA Airports office Manager.
9. The Decision Summary Table as an attachment. This table may be created using the Decision Summary Report from SOAR; however, the report should be checked against other PFC records to ensure that it is accurate and that the current decision has been added to the table.

6.6.2 Post Letter of Acknowledgement or Letter of Objection. After issuing the FAA's LOA or LOO, the FAA Airports office must make the following entries in SOAR:

1. For each project in the NOI, verify that the project information initially entered is correct, including the acknowledged PFC level and the PFC amount. Then select the appropriate 'decision status' from the choices provided (acknowledged, partially acknowledged, objected to, or withdrawn). If 'objected to' is selected, briefly state the reason for the objection in the field provided. If the project was withdrawn, enter the date it was withdrawn.
2. Verify that the excluded classes of carriers originally entered are appropriately acknowledged or objected to.
3. Select the appropriate 'approved' PFC collection level.
4. Insert the acknowledged PFC charge effective and expiration dates in the 'Original' fields.
5. Select the appropriate 'Status' for the application (Acknowledged or Objected).
6. Enter the actual 'Decision' date, then select 'Save.'
7. Upload a portable document format (pdf) copy of the LOA or LOO, including the Decision Summary Table, into SOAR by the end of the business day following the decision date.

6.6.3 Public Agency Actions.

- 6.6.3.1 If the FAA does not object to the NOI in its entirety, the public agency may implement its PFC program for those projects for which the FAA did not object. The public agency may not collect or use PFC revenue for any project for which the FAA objected. In implementing its PFC program, the public agency must follow the information specified in its NOI, as modified by the FAA's Letter of Acknowledgement (14 CFR § 158.30(f)).
- 6.6.3.2 If the FAA objects to the NOI in its entirety, the public agency may not implement its PFC program as proposed in the NOI. If the public agency still wishes to pursue a PFC program, it must begin the process anew (14 CFR § 158.30(f)).

The public agency must notify the carriers in writing of the FAA's decision on the NOI and provide a copy of the notification to FAA Airports office.

Chapter 7. Public Agency Collection and Monitoring

Section 7.1 General

7.1.1 **Overview.** This chapter describes procedures for initiating the collection of PFCs by public agencies, for adjusting the duration of collection, and for a public agency to follow if it files for bankruptcy protection.

Section 7.2 Public Agency Collections

7.2.1 Notice to Carriers.

7.2.1.1 **Requirement.** The public agency must provide written notification to air carriers with a significant business interest at its airport that the FAA has approved an application to impose a PFC (49 U.S.C. § 40117(c)(2) and 14 CFR § 158.23). The public agency must provide a copy of the notification to the FAA Airports office, which will place it in the application file.

7.2.1.2 **Scope.** The notification shall contain, at a minimum, the following information:

1. The level of PFC to be imposed
2. The total PFC revenue to be collected
3. The charge effective date
4. The estimated charge expiration date
5. A copy of the FAA decision document
6. The public agency's PFC contact person's name and phone number, the physical and e-mail addresses where remittances and reports will be filed by carriers, and any other information required for remittance.
7. If a public agency changes the physical mailing address for remittances, it must immediately notify all air carriers that have remitted PFCs over the previous six months of the new remittance address (14 CFR § 158.23).

7.2.1.3 **FAA Review.** The FAA Airports office must review the notice to carriers. If the FAA Airports office determines that any of the required information is missing, or does not match information in the FAA decision document, it must notify the public agency within 10 days of FAA's receipt of the notice. The public agency must then revise or supplement the notice to the air carriers as appropriate. If the FAA Airports office notes that the public agency's charge effective date is different from the charge effective date in the FAA's decision document, FAA Airports office must immediately notify APP-510 of the disparity and change the charge effective date in SOAR.

- 7.2.1.4 **Subsequent Notice.** If an air carrier begins service at the impose airport after the public agency has notified the incumbent carriers of the charge effective date, it must subsequently notify the new entrant of the charge effective date. The charge effective date for the new carrier must be the first day of a month at least 30 days from the date the new air carrier begins service at the impose airport, unless it agrees in writing to an earlier date (14 CFR §§ 158.23 and 158.43(a)(3)).
- 7.2.2 **Notice to Excluded Carriers.** If the FAA has approved a request by the public agency to exclude a class or classes of air carriers from the requirement to collect the PFC, the public agency must notify those carriers that the exclusion has been approved. The air carriers must also be notified that if their enplanements exceed one percent of the total enplanements at that airport on an annual basis, the public agency will notify them to begin collections.
- 7.2.3 **Beginning Collections.** The earliest charge effective date is the first day of the month that is at least 30 days from the date the public agency has notified the carriers of the FAA's approval to impose the PFC (14 CFR 158.43). Although most public agencies will request the earliest charge effective date, some public agencies may request either a later charge effective date or withhold notice to the air carriers until a later date (not to exceed one year from the approval date to ensure that application and collection data remain accurate).

In the case of a subsequent application by a public agency to continue PFC collection, the earliest charge effective date will be the charge expiration date for the previous application, as long as such date is at least 30 days after the issuance of the FAA's decision on the new application (*see* 14 CFR 158.43).

Beginning on the charge effective date, tickets issued for enplanements at airports approved to impose a PFC must include the required PFC, except as provided in Paragraphs 5.3.3.3, 8.2.4, 8.2.5, and 8.3.1 of this Order (*see* 14 CFR 158.45).

- 7.2.4 **Monitoring Dates and Amounts.** A public agency that collects PFCs is responsible for monitoring the charge effective and charge expiration dates, as well as the approved amounts for each of its PFC decisions. The FAA Airports office will assist by monitoring these dates and amounts as part of its review of each public agency's PFC program status and may suggest actions a public agency should take to maintain or to stop collections.

Both the public agency and the FAA Airports office can use two sources to monitor PFC program collections: The approved locations list, which is published on the FAA PFC web site on a monthly basis and in SOAR.

- 7.2.4.1 **Approved Locations List.** The approved locations list is the FAA's official cumulative listing of PFC charge effective and expiration dates. The list is prepared by APP-510 and is updated monthly with PFC decisions issued nationwide (i.e., applications, notices of intent, amendments, and other public agency notifications to collect PFCs—typically referred to as a 43c). The list

is published on the PFC website and also sent directly to industry groups representing air carriers, airports, and the public (See [PFC Monthly Reports Airports](#)). The industry groups use the information on the list to program air carrier ticketing and reservation systems so that appropriate PFCs are added to the total price when a passenger purchases a ticket.

The list identifies each airport at which a public agency has been authorized to collect a PFC. For each airport, the list shows the charge effective and expiration dates, PFC level, and the total amount approved for collection. It also shows gaps in the collection stream, if any, and changes in the PFC level.

Public agencies should review the approved locations list regularly to ensure that they know what information is being provided to the air carriers. If the public agency believes any of that information is wrong, it must notify the FAA Airports office, which will notify APP-510.

FAA Airports offices should also review the list on a regular basis so that they can advise public agencies on the timely submission of any new public agency notifications to collect PFCs (also called a 43c), new application, or new NOI. As a best practice, record of the FAA Airport office's recommended actions and the public agency's responses should be kept in the office's PFC files.

7.2.4.2 **SOAR.** The SOAR database contains the details of all PFC decision actions. Public agencies may request their own user account, which permits the public agency to input its quarterly report information directly into the database. User account access also provides the public agency with summary reports and information so that it can monitor its PFC collection stream.

Using the 'PFC Details' tab in SOAR, a public agency can bring up an application page for each of its collecting airports. This page includes information on the total PFC amount the public agency has been authorized to collect at each airport, the total amount (plus interest earned) that the public agency has reported as collected for the airport, the remaining amount authorized to be collected and the last legal charge expiration date for each airport's PFC program (which will be the date in the last official FAA correspondence approving or modifying a PFC duration).

The application page also provides a calculated charge expiration date, which is based on the remaining amount authorized for collection divided by the average monthly collection rate over the preceding 2 months. Such a calculated charge expiration date is not, however, the legal charge expiration date and it is not provided to the air carriers and does not, in and of itself, have an effect of the authorized duration of collection. This date is for solely for the use and benefit of the public agency and the FAA in monitoring the public agency's PFC collections.

If a public agency believes that it needs to adjust its duration of collection because it is collecting faster or slower than it had estimated, it must file a 43c request to modify the duration of collection with the FAA Airports office. This request must be submitted at least 60 days before the current charge expiration date or proposed new charge expiration date, whichever comes first.

- 7.2.5 **Loss of Service.** If an airport loses scheduled commercial service or its annual passenger enplanements drop below 2,500, the public agency may continue to collect PFC revenue for any previously approved applications until it has collected the amount approved for those applications. A public agency may want to keep its existing authority open, even if little to no PFC revenue is being remitted if it expects its prior service to resume or new service to come to the airport. This can be challenging with ongoing projects. While there is no specific deadline in the PFC statute or regulation requiring a specific project completion date, it's very difficult administratively to keep such applications and project open.

Accordingly, if the airport loses all of its commercial service, the public agency may wish to terminate any open PFC applications and reapply for the authority to impose a PFC once commercial service resumes.

Section 7.3 Adjustments to the Duration of Collections

- 7.3.1 **Adjustments to the Duration of Collection.** The public agency's authority to collect PFCs for each project in its PFC program *expires automatically* when the legal charge expiration date, as designated by the FAA, is reached or when the collections (plus interest earned thereon) equal the amount approved, whichever is earlier (14 CFR 158.31). The proceeds from the sale or rental of land or other facilities acquired with PFC revenue is considered PFC revenue and must be included to determine when the approved totals have been reached (*see* 14 CFR 158.3). Public agencies must monitor their collections to avoid collecting more than has been approved.

Brief interruptions in PFC collections are burdensome for airports, airlines and the FAA. When collections are either faster or slower than expected, a public agency must provide timely written notice to the FAA and air carriers to change the charge expiration date. The 43c⁴⁷ notice must include the proposed new charge expiration date and the justification for the change. It must be sent to the collecting carriers and to the FAA Airports office at least 30 days before either the date when the public agency's PFC revenues (plus interest earned thereon), is expected to equal the total allowable costs for all approved projects in the application, or the existing charge expiration date for that specific application, whichever is earlier.

The FAA Airports office will review the proposed new charge expiration date and the justification provided by the public agency to ensure that the new date has been correctly determined. An extension of the duration of an existing application for the sole purpose

⁴⁷ The authority allowing the public agency to change the duration of collection is found in §158.43(c). The action is referred to as a 43c.

of extending collections until a new application can be submitted is not considered a valid justification, since it would lead to excess collections.

If the FAA agrees with the proposed change, the FAA Airports office will acknowledge this change in writing and process a 43c action in SOAR in a timely manner (including uploading the acknowledgement letter). If the FAA does not agree with the proposed change, the FAA Airports office will issue a letter of disagreement that explains the reasons for the disagreement. Unless the public agency resolves these issues in an expedient manner, the PFC collection stream is likely to lapse.

All charge expiration dates will be on the first day of the month following the month in which the charge expired. For example, if the collection period ends in February, the charge expiration date would be March 1. If this requirement results in the collection of excess revenue, the public agency must follow the procedures in 14 CFR §158.39, including submitting a plan to the FAA Airports office for using the accumulated excess PFC revenue (*see* Paragraph 9.2.7).

- 7.3.2 **Consideration for Processing Errors That Affect PFC Levels and Duration of Collections.** If a clerical or other processing error or oversight affects either collection levels or their duration (in particular, create an unplanned level or duration gap), the FAA will work with the public agency, local FAA office, and the air carriers (though ticketing clearing houses and, as needed, with individual carriers) to reestablish the correct PFC level or duration. The objective of the FAA is to negate or minimize any incorrect charge levels or unplanned breaks in collection. In rare cases, this may require notifying the carriers to collect PFCs beginning on a date other than the first of the month in order to minimize the revenue impact. Public agencies must carefully monitor their PFC collections, effective and expiration dates, and PFC revenue amounts so that they may take corrective actions in time for the FAA to respond with the required approvals without interrupting collections.
- 7.3.3 **Historic Gap.** A ‘historic gap’ in collections takes place when a public agency stops collecting PFCs for at least a month, regardless of the reason for the stoppage. Once there is a gap in collections, changes to the duration of collection can only be made to applications that have charge effective dates after the end of the gap. The gap cannot be otherwise closed or modified.
- 7.3.4 **Change of Level.** A ‘change of level’ occurs when the PFC amount being collected from each passenger changes, for example from \$3.00 to \$4.50 or from \$4.50 to \$3.00. A change of level will always be approved for a date in the future and will always take place occur on the first day of a month.

As with a ‘historic gap,’ a ‘change of level’ has the effect of freezing all charge effective and expiration dates that occurred before the change. Changes to charge effective or expiration dates that would have the effect of moving the effective date of a historic change of level are prohibited, since those dates are fixed in time.

Section 7.4 Expiration of Collections

- 7.4.1 **Charge Expiration Date.** The public agency is responsible for notifying the collecting carriers and the FAA Airports office of the charge expiration date. The charge expiration date could be the date approved in the decision or the date in a subsequent notice from the public agency revising the date (subject to acknowledgement from the FAA). The collecting carriers and their agents must stop collecting the PFC on the charge expiration date.

Section 7.5 Public Agency Bankruptcy

- 7.5.1 **General.** This section provides direction to FAA personnel on dealing with a public agency that has been given authority to collect a PFC for one or more of its airports and has subsequently filed for bankruptcy protection, whether the public agency files for Chapter 7, 9, 11, 13, or 15 protection under the U.S. bankruptcy laws. The public agency must comply with the requirements discussed in the following paragraphs until it emerges from bankruptcy protection.
- 7.5.2 **Reminder Notice.** As soon as the FAA Airports office knows that a public agency has filed for bankruptcy protection, it must send the public agency a written notice reminding the public agency of its obligations and responsibilities under the PFC program. Specifically, this letter should remind the public agency that it may only use PFC revenue (plus the interest earned thereon) and any proceeds accrued from the sale of PFC-financed facilities, for the allowable costs of approved PFC projects. The letter should also warn the public agency that use of PFC funds for other purposes would be a violation of PFC Assurances and that this violation would result in the FAA undertaking termination proceedings (*see* Appendix C).
- 7.5.3 **SOAR Compliance.** A public agency filing for bankruptcy protection will be *required* to file PFC reports in a timely manner in SOAR. If the public agency has not obtained SOAR access at the time of the bankruptcy filing, the FAA Airports office must instruct the public agency to request a user account immediately.

Once the account request has been processed, or if the public agency already has a SOAR account, it will be given 15 days to bring all required information on PFC collections and approved projects up to date. The required information includes PFC revenue received, interest earned on unliquidated revenue, project schedules, and project disbursements.

The FAA Airports office will further instruct the public agency that until the public agency emerges from bankruptcy protection, the public agency is required to update the revenue and disbursement screens in SOAR on a monthly basis, no later than the close of the first business day on or after the first day of the month. The revenue reported must be the total of PFC revenue actually received from collecting carriers and their agents during the previous month. The disbursements reported must be the amount of PFC revenue disbursed on the projects, with the monthly amounts accumulating during the quarter.

- 7.5.4 **Additional Required Reports.** In addition to these monthly reports, the public agency must provide to the FAA within 15 days of the FAA's reminder notice an up-to-date

schedule for the actual implementation or completion for any approved project that, as of the date of the reminder notice, has not been implemented or completed.

If any approved project includes financing (bond, letter of credit, commercial paper, etc.) and has not yet been financially completed, the public agency must provide a written update to the FAA within 15 days of the reminder notice as to how this project's financial viability is affected by the bankruptcy filing.

If the FAA's review of the current data in SOAR indicates that the public agency has a large unliquidated balance in its PFC account, the public agency must provide a written explanation within 15 days of the reminder notice of the reasons for this balance and the public agency's planned schedule for disbursing this balance.

- 7.5.5 **Non-Hub Airports.** If the public agency owns and controls a non-hub airport, any requests for new PFC authority while it is under bankruptcy protection must be filed using the procedures in §158.25, which allow the FAA to adequately evaluate the financial viability of proposed projects. Once the public agency has emerged from bankruptcy protection, the FAA will re-evaluate this requirement and may allow the public agency to file requests for new PFC authority using the procedures in §158.30.

Chapter 8. Air Carrier Collection, Handling and Remittance

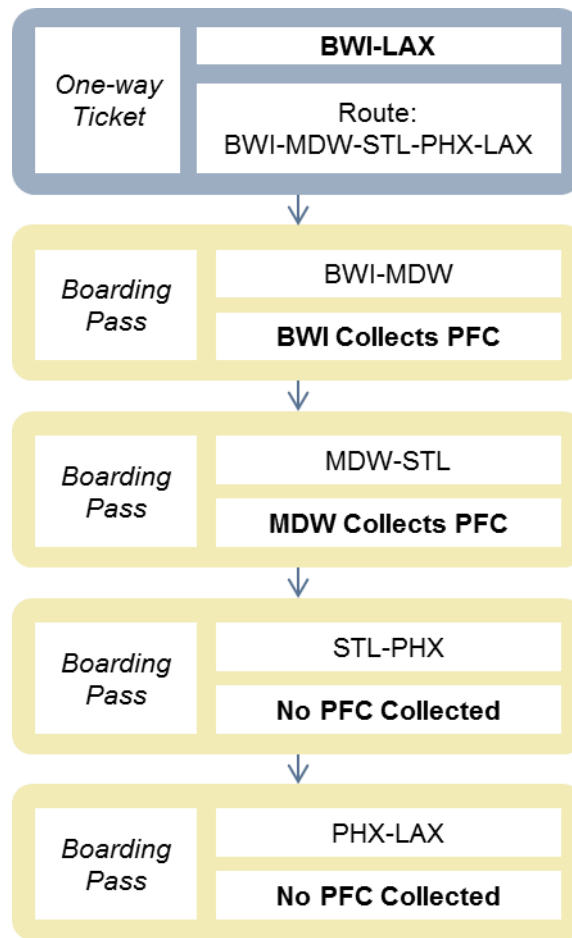
Section 8.1 General

8.1.1 Overview. This chapter describes procedures for the collection, handling and remittance of PFCs by air carriers and the compensation they receive to cover their program costs.

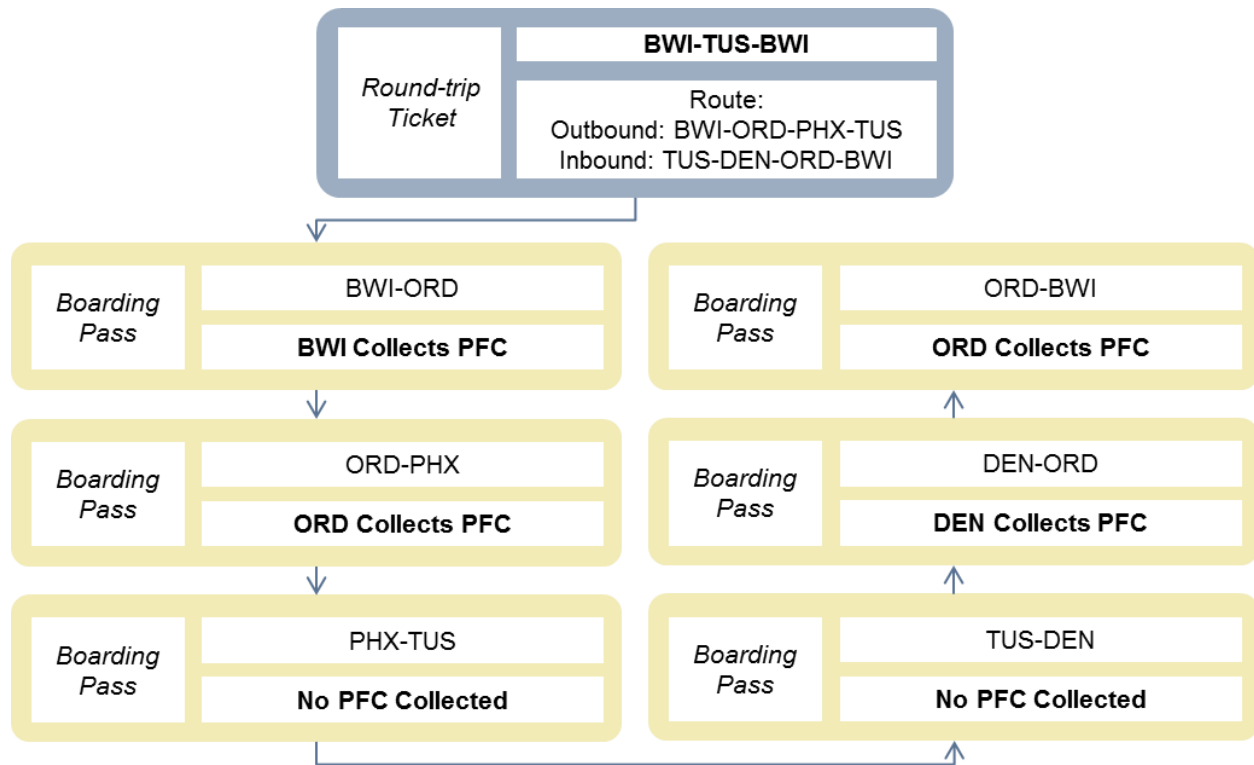
Section 8.2 Collection on Tickets Issued Inside the United States and Tickets for Travel Wholly Within the United States

8.2.1 Collection of PFCs.

- 8.2.1.1 Air carriers issuing tickets within the United States must follow the procedures specified in 14 CFR § 158.45. Carriers are responsible for all PFC funds from the time of their collection from the passenger to their remittance to the public agency. Carriers are also responsible for their agents' compliance with PFC collection requirements.
- 8.2.1.2 Air travel tickets are defined in 14 CFR § 158.3 as all documents, electronic records, boarding passes, and any other ticketing medium about a passenger's itinerary necessary to transport a passenger by air, including passenger manifests (14 CFR § 158.3).
- 8.2.1.3 The appropriate charge is the PFC in effect at the airport at the time the ticket is issued, not when the travel occurs (14 CFR § 158.45(a)(2)).
- 8.2.1.4 Issuing carriers, and their agents, are required to collect the PFCs based upon the passenger's itinerary at the time of ticket issuance:
 - 8.2.1.4.1 For each one-way trip shown on the complete itinerary of an air travel ticket, issuing air carriers and their agents must collect a PFC from an enplaned revenue passenger only for the first two airports where PFCs are imposed. For example, suppose a passenger purchases a one-way ticket from BWI to LAX with connections in MDW, STL and PHX (the passenger's itinerary is: BWI-MDW-STL-PHX-LAX). Assuming that each stop required a new ticket coupon (or equivalent) and all the airports collect PFCs, the passenger would pay a PFC for BWI and MDW only.

Figure 8-1. Example

- 8.2.1.4.2 For each round trip, a PFC will be collected only for enplanements at the first two enplaning airports (on the outbound leg) and the last two enplaning airports (on the return leg) where PFCs are imposed (*see* 14 CFR § 158.45). For example, suppose a passenger purchases a round-trip ticket from BWI to TUS (the passenger's itinerary is: BWI-ORD-PHX-TUS outbound and TUS-DEN-ORD-BWI inbound). Assuming that each segment required a new ticket coupon (or equivalent), record and each airport collects PFCs, the passenger would pay a PFC for BWI and ORD outbound, and DEN and ORD inbound.

Figure 8-2. Example

8.2.2 Information Required to be Provided to the Passenger. Issuing carriers and their agents must note, as a separate item on each air travel coupon or equivalent record for which a PFC has been collected, the total amount of PFCs paid by the passenger and the airports for which the PFCs have been collected (14 CFR § 158.45(b)).

8.2.3 Adjustments. Air carriers must collect or refund PFCs, as appropriate, for itinerary changes initiated by the passenger, if the changes require an adjustment to the total amount of PFCs to be paid by the passenger (14 CFR § 158.45(a)).

For example, suppose a passenger purchases a roundtrip ticket from JFK to LAX, with connections in DEN in both directions. If all three of these airports collect a \$4.50 PFC, the carrier would collect a total of \$18 in PFCs for two points out and two points in return. If the passenger, at his or her own request, rebooks a non-stop flight from JFK to LAX with a return trip the same way. The passenger would now be required to pay only \$9 (for JFK outbound and LAX on return) and would be entitled to receive a refund of \$9.

PFCs that are collected by air carriers will be remitted to public agencies according to the original itinerary for itinerary changes initiated by the air carrier. For example, if the itineraries in the above example were applied to a case where an air carrier, because of a flight cancellation, overbooking, or other situation, initiated itinerary changes, a refund would not be issued to the passenger and the carrier would remit the PFCs as originally ticketed.

8.2.4 Limitations.

- 8.2.4.1 **One Way.** Issuing carriers and their agents may not collect PFCs from a passenger for more than two (2) boardings on a one-way trip itinerary (14 CFR § 158.9(a)(1)).
- 8.2.4.2 **Round Trip.** Issuing carriers and their agents may not collect PFCs from a passenger for more than two (2) boardings in each direction, or a total of four (4) boardings, on a round trip itinerary (*see* 14 CFR § 158.9(a)(1)).
- 8.2.4.3 **Essential Air Service.** Issuing carriers and their agents may not collect PFCs from a passenger on any flight to an eligible point on an air carrier receiving compensation on that route under the Essential Air Service (EAS) program (49 U.S.C. § 41742) (49 U.S.C. § 40117(e)(2)(B)). The ‘eligible point’ is defined as the airport that is guaranteed air service on an EAS designated route. PFCs are collected from passengers traveling on air carriers not receiving essential air service compensation on that route. The list of approved EAS points is maintained in the DOT, EAS and Domestic Analysis Division, X-53, and is available on its internet website and the PFC internet website.

The limitation to the collection of PFCs on EAS compensated travel does not affect the ability of public agencies that control EAS-designated airports to collect PFCs. These public agencies are eligible to apply for a PFC and can collect from passengers enplaning at the airport, regardless of an EAS designation or subsidy.

- 8.2.4.4 **Frequent Flyer Awards.** Title 49 U.S.C. § 40117(e)(2)(C) precludes the collection of a PFC from a passenger enplaning at an airport if the passenger did not pay for the air transportation that resulted in such an enplanement, including any case in which the passenger obtained the ticket for the air transportation with a frequent flyer award coupon without monetary payment.

The FAA has interpreted this provision to prohibit the collection of PFCs from passengers considered to be nonrevenue passengers under existing DOT Regulations and from passengers who obtained their ticket with an award coupon issued under a frequent flyer or similar bonus award program (‘frequent flyer award coupon’) (14 CFR § 158.9(a)(3)). For purposes of this provision, the FAA considers a ‘frequent flyer award coupon’ to be a zero-fare award of air transportation that an air carrier provides to a passenger in exchange for accumulated travel mileage or trip credits in a customer loyalty program. The definition of ‘frequent flyer award’ does not extend to the redemption of accumulated credits for awards of additional or upgraded service on trips for which the passenger has paid a published fare. The FAA does not construe 49 U.S.C. § 40117(e)(2)(C) as applying to ‘two-for-the-price-of-one’ and similar marketing programs, or to air transportation purchased for a passenger by other parties (14 CFR § 158.9(a)(3)).

- 8.2.4.5 **Military Charter.** Issuing carriers and their agents may not collect PFCs from a passenger if the passenger did not pay for the air transportation because of Department of Defense charter arrangements and payments (49 U.S.C. § 40117(e)(2)(F)). This exclusion only applies to Department of Defense charters and not to charters for military personnel or veterans organizations arranged and paid for by other organizations.
- 8.2.4.6 **Non-Revenue Passengers.** Issuing carriers and their agents may not collect PFCs from a passenger if the passenger did not pay for the air transportation because of any other arrangements with the carrier (e.g., carrier employees). A non-revenue passenger is defined as a passenger receiving air transportation from an air carrier or foreign air carrier for which remuneration is not received by the air carrier or foreign air carrier as defined under Department of Transportation Regulations or as otherwise determined by the Administrator. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are also considered nonrevenue passengers (14 CFR § 158.3).
- 8.2.4.7 **Inter-Island Flights in Hawaii.** Issuing carriers and their agents may not collect PFCs from a passenger on flights, including flight segments, between two (2) or more points in Hawaii (14 CFR § 158.9(a)(4)).
- 8.2.4.8 **Flights in Alaska.** Issuing carriers and their agents may not collect PFCs from a passenger on flights in Alaska aboard an aircraft having a certificated seating capacity of less than 60 passengers (14 CFR § 158.9(a)(5)).
- 8.2.4.9 **Treatment of Air Ambulance, Sightseeing, Flight Instruction and Technical Stops.** Air ambulance flights are not considered for the collection of PFCs if they do not travel between two points. Sightseeing flights, which often begin and end at the same point with no stop, will also not be considered for PFCs if they do not travel between two points. Flight instruction flights will not be considered for PFCs as they are not operated under air carrier, foreign air carrier, or commuter and on demand regulations (14 CFR Parts 121, 129, or 135); nor do they involve revenue passengers. Passengers are not considered to be enplaned at technical stops since they are not shown on the passenger's ticket and therefore a PFC will not be collected.
- 8.2.5 **Termination of PFC Collections.** Issuing carriers and their agents must stop collecting PFCs on the charge expiration date stated on the most recent notice received from the public agency, or as required by the FAA.

Section 8.3 Collection on Tickets Issued Outside the United States for Travel That is Not Wholly Within the United States

- 8.3.1 **Collection Options.** The FAA recognizes that the operational practices of air carriers that issue tickets outside the United States for international air travel (i.e., travel through

a United States gateway airport) need some flexibility in collecting PFCs. To accommodate these various operational practices, the FAA has created two regulatory options for the collection of PFCs. An air carrier that issues tickets outside the United States may follow the requirements of either 14 CFR § 158.45 (Section 8.2) or 14 CFR § 158.47 (Section 8.3). However, the air carrier must use Section 158.45 (Section 8.2) for any tickets it issues for travel solely within the United States, regardless of where the ticket is issued.

Notwithstanding the above, no foreign airline is required to collect a PFC on an air travel ticket issued on its own ticket stock or its own code unless it serves a point or points in the United States.

- 8.3.2 Collection Only for Gateway Airport.** Those air carriers that choose to comply with the requirements of Section 158.47 must collect a PFC only for the public agency controlling the gateway airport, defined as the last airport at which the passenger is enplaned prior to departure from the United States (*see* 14 CFR § 157.47(c)).

If the gateway airport does not collect PFCs, none will be collected. The PFC will not be collected for any preceding airport on the ticket, even if other airports on the itinerary collect PFCs. As an example, suppose a passenger plans a trip from Singapore to Seattle and return, with an itinerary of Singapore-Guam-LAX-SEA outbound and the reverse inbound. The ticket has been issued outside the United States by an air carrier serving the United States. Assuming all United States airports on this itinerary charge PFCs and issue ticket coupons for all segments, a PFC would be collected only for Guam on the return leg, since it is the departure gateway. However, if Guam were not collecting PFCs, no PFCs would be collected for this trip, even though LAX and SEA do impose a PFC.

- 8.3.3 Time of Collection.** The foreign air carrier that complies with 14 CFR § 158.47 may collect the PFC either at the time the ticket is issued or at the time the passenger is last enplaned before departure from the United States. The carrier may vary the point of collection (ticket issuance or passenger enplanement) on different flights.

- 8.3.3.1 At Ticket Issuance.** For carriers collecting the PFC when the ticket is issued, the charge will be the PFC level in effect at the time the ticket is issued, based upon the itinerary. Any changes in the itinerary that are initiated by the passenger and require an adjustment of the amount paid by the passenger, are subject to the collection or refund of the PFC as appropriate. However, a passenger's failure to travel on a nonrefundable or expired ticket is not considered a change in itinerary. If the ticket purchaser is not entitled to a fare refund on the unused ticket, he or she is not entitled to the refund of any PFC associated with the ticket.

The air carrier collecting the PFC when the ticket is issued will not be required to check each enplaning passenger's ticket for that flight to determine if the PFC has been collected for the gateway airport, whether or not the ticket was sold by the operating carrier.

- 8.3.3.2 **At Passenger Enplanement.** If the carrier chooses to collect the PFC at the time of enplanement, the tickets of each enplaning passenger must be examined for evidence of the payment of a PFC to the gateway airport on and after the charge effective date. The air carrier must collect the PFC from any passenger whose air travel ticket does not include a written record indicating that the PFC was collected when it was issued. These procedures also apply to tickets issued before the charge effective date for travel occurring after the charge effective date, since no PFC would have been shown on or included with the ticket. As an example, suppose Croatia Airlines, which does not serve a point in the United States, issued a ticket with the itinerary Croatia-London-IAD and return. The IAD-London leg is on British Airways, which (for this example) collects PFCs at the gate for this leg. British Airways is required to examine each ticket of each passenger enplaning at IAD to determine if a PFC was paid at the time of issuance and collect a PFC from those passengers without such proof. The passenger issued the ticket by Croatia Airlines (which was not required to collect a PFC when it issued the ticket) would be required to pay a PFC at the time of enplanement at IAD.
- 8.3.4 **Information Required to be Provided to the Passenger.** The carrier must provide a record to the passenger that a PFC has been collected. The record must appear either on the ticket or on a separate document issued with the ticket and include the information required by the 14 CFR § 158.45.
- 8.3.5 **Termination of PFC Collections.** Issuing carriers and their agents must stop collecting PFCs on the charge expiration date stated on the most recent notice received from the public agency, or as required by the FAA.

Section 8.4 Air Carrier Accounting and Handling of PFC Revenue Collected

- 8.4.1 **General.** Carriers that collect PFCs are responsible for all PFC funds from the time of their collection to their remittance to the public agency. Those carriers must establish and maintain a financial management system to track PFCs in accordance with the DOT's Uniform System of Accounts and Reports (14 CFR Part 241). Carriers that are not subject to Part 241 are required by the PFC Regulation Section to establish and maintain an accounts payable system to handle PFC revenue, with subaccounts for each public agency to which the carrier remits PFC revenue (14 CFR § 158.49(a)).
- 8.4.2 **Handling of PFC Revenue Prior to Remittance.** Carriers that collect PFCs must account for that revenue separately from other revenue they receive (PFC revenue may be commingled with the carrier's other sources of revenue, except for 'covered air carriers' discussed in Paragraph 8.4.6 below). PFC revenues held by an air carrier or an agent of the air carrier are held in trust for the beneficial interest of the public agencies that have imposed the PFC (14 CFR § 158.49(b)). All PFC revenue collected and held by the air carrier is the property of the public agencies. The air carrier or its agent does not have a legal or equitable interest in the PFC revenue, except in the case of any collection compensation or interest earned on unremitted proceeds as authorized in the PFC Regulation (*see* Paragraph 8.4.5 below) (14 CFR § 158.49(b)). In their financial

statements, collecting carriers must disclose the existence and amount of PFC funds held in trust for public agencies (14 CFR § 158.49(d)). Carriers may use the DOT Form 41 reporting process to make this disclosure; alternatively, a carrier may use its annual publicly-released financial statements.

PFCs collected by carriers must be remitted to the public agency on a monthly basis. PFC revenue recorded in the accounting system of the carrier must be remitted to the public agency no later than the last day of the following calendar month (or the first business day thereafter if such date falls on a weekend or holiday) (*see* 14 CFR § 158.49(c)).

Remittance is not defined in the PFC statute or regulation. In particular, the PFC Regulation does not specify whether remittance takes place when the funds are sent by the air carrier or when the funds are received by the public agency. Until this issue can be resolved through rulemaking or legislative action, the FAA cautions carriers that any receipt of a payment instrument by a public agency that occurs more than five days after the remittance date specified above will be treated as a potential late remittance by the FAA.

- 8.4.3 **Improper Holding.** If a public agency fails to receive PFC revenue recorded in the accounting system of an air carrier five days or more after the end of the following calendar month, the air carrier will be considered to be improperly holding PFC revenue. Since public agencies have a property interest in PFC revenues collected on their behalf, the FAA looks to public agencies to resolve remitting and reporting irregularities directly with the collecting carriers. State laws governing trust accounts define the public agency's legal rights to PFC revenue collected on its behalf and the procedures available to the public agency to enforce those rights. However, if the public agency is not successful in resolving the issue directly, the FAA and the Office of the Secretary of Transportation (OST), Assistant General Counsel for Operations, may facilitate voluntary resolution, and if necessary, assist in applying administrative compliance and judicial remedies available to it. The FAA Airports office and headquarters office will coordinate with OST and the FAA General Counsel in these cases.

The PFC Regulation does not prohibit public agencies from imposing penalties and interest on PFC revenue that is past due so long as it is applied in a non-discriminatory manner. Penalties and interest on PFC revenue imposed and received by a public agency is considered to be PFC revenue; and therefore, the FAA will not allow a public agency to collect more than the approved PFC total.

- 8.4.4 **Refunds.** Air carriers must refund PFCs to passengers for itinerary changes initiated by the passenger, as appropriate, if the changes require an adjustment to the total amount paid by the passenger (14 CFR § 158.45(a)). Failure to travel on a nonrefundable or expired ticket will not be considered a *change in itinerary* and the public agency is entitled to the PFCs as if the passenger had actually traveled. If a change in itinerary initiated by a passenger results in the refund of one or more PFCs, the collecting carrier must promptly refund the full amount of the PFCs to the passenger. Since the carrier is still entitled to the handling fee, as authorized in the PFC Regulation (*see*

14 CFR § 158.49(b) and Paragraph 8.4.5 below) for any PFCs collected, the carrier may deduct the handling fee for any PFCs refunded from future remittances of PFC revenue to the public agency. Alternatively, the collecting carrier may bill the public agency for the handling fees for any PFCs refunded. The public agency must pay the collecting carrier the handling fees within 30 days of the receipt of an invoice from the carrier. The public agency may treat any such handling fees paid to the carriers as a PFC administrative cost, which, if approved by the FAA, is reimbursable from PFC revenues.

8.4.5 Collection Compensation. As compensation for collecting, handling, and remitting the PFC revenue, the collecting air carrier is entitled to retain:

1. \$0.11 of each PFC collected, or any such amount that the FAA may set subsequent to the release of this Order through a rulemaking action; and
2. Any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.⁴⁸

Collecting carriers are entitled to compensation for all PFCs *collected*, regardless of if some PFCs are refunded to the passengers (*see* 14 CFR 14 CFR § 158.53)). The following is the formula required for use by the collecting carriers to calculate carrier compensation:

$$\text{Compensation Rate} \times \text{Number of PFCs Collected} = \text{Amount of Compensation}$$

As stated above, collecting carriers have no property interest in PFC revenue. Therefore, they have no legal basis for withholding or delaying payments, and any such instance would be considered a violation of the PFC Regulation. In addition, carriers are not entitled to any interest earned on PFC revenue that is held beyond the allowed time frame for remittance as prescribed in Paragraph 8.4.3.

Periodically, the FAA may issue a *Federal Register* notice requesting collection cost data from the collecting carriers and specifying a deadline for filing the information. Submission of cost data is voluntary, but information on the interest earned on unremitted PFC revenues and collection, handling, and remittance costs in the following categories:

1. Credit card fees
2. Audit fees
3. PFC disclosure fees
4. Reservation costs
5. Passenger service costs

⁴⁸ A covered (bankrupt) air carrier that fails to designate a separate PFC account is prohibited from collecting interest on the unremitted PFC revenue. However, if it maintains a separate PFC account, in accordance with the PFC Regulation, it may retain the interest earned (49 USC 40117 (m)(4)).

6. Revenue accounting, data entry, accounts payable, tax and legal fees
7. Corporate property department costs
8. Training costs for reservations agents, ticket agents, and other employees
9. On-going carrier information system costs
10. Airline Reporting Corporation fees

Based on the analysis of the data provided by air carriers in response to the *Federal Register* notice,⁴⁹ the FAA may, in its sole discretion, determine that a new compensation level is justified. This review process was established to avoid the need for a notice and comment rulemaking to reassess the level of compensation for the collection of PFCs.

8.4.6 Covered (Bankrupt) Air Carriers. The provision of 14 CFR § 58.49(b) that allows an air carrier to commingle its PFC revenue with other sources of revenue it receives (*see* Paragraph 8.4.2 above) does not apply to a covered air carrier. Paragraph 158.49(c)(1) requires a covered air carrier to segregate PFC revenue in a separate, designated PFC account before filing its bankruptcy petition. Regardless of the amount of PFC revenue in the air carrier's general accounts at the time the bankruptcy petition is filed, it must deposit into the separate PFC account an amount equal to the average monthly PFCs collected by the air carrier and any of its agents.

8.4.6.1 A covered air carrier is required to create one PFC account for all PFC revenue it collects. Such an account is to be used solely for PFC transactions and the air carrier must make all PFC transactions from that account. The covered air carrier is not required to create separate PFC accounts for each of the airports for which it collects PFCs. *A covered (bankrupt) air carrier that fails to designate a separate PFC account is prohibited from collecting interest on any unremitted PFC revenue.*

8.4.6.2 A covered air carrier must transfer PFCs from its general accounts into the separate PFC account in an amount equal to the average monthly PFC collected by the air carrier and its agents. This amount is considered the 'PFC reserve.' The PFC reserve must always equal a one-month average of the total PFCs collected, minus collection compensation and refunds, during the previous 12-month period of PFC collections immediately before the bankruptcy petition was filed (*see* 14 CFR § 158.49(c)).

8.4.6.3 A covered air carrier may continue to deposit the PFCs it collects into its general operating accounts, combining it with ticket sales revenue. However, at least once each business day, it must remove all PFC revenue from these accounts and transfer it to the separate, designated PFC account. In lieu of determining the exact daily amount of PFC revenue to transfer to the PFC

⁴⁹ For this review to take place, cost data must be submitted by air carriers with collections representing at least 75 percent of the PFCs collected nationwide.

account, the air carrier may transfer an estimated amount based on 1/30th of the required PFC reserve balance. If this method is used, the covered air carrier must reconcile the estimated amount with the actual amount of PFCs collected for the prior month. This reconciliation must take place by the 20th of the month (or the next business day if the 20th is not a business day). If the actual PFCs collected for the prior month are greater than the total estimated amount, the covered air carrier must, within one business day of the reconciliation, deposit the difference into the PFC account. If the actual PFCs collected for the prior month are less than the total estimated amount, the covered air carrier is entitled to a credit in the amount of the difference to be applied to the next daily PFC amount due to be deposited in the PFC account (*see* 14 CFR § 158.49(c)).

- 8.4.6.4 A covered air carrier may recalculate and reset its PFC reserve amount and estimated daily PFC amount on each successive anniversary date of its bankruptcy petition, using the methodology described above.

If a covered air carrier or its agent fails to segregate PFC revenue as required by 14 CFR § 158.49(c)(1), the trust fund status of the PFC revenue is not negated by any party's inability to identify and trace the exact amount of PFC funds in the air carrier's general accounts.

A covered air carrier and its agents may not grant any security or other interest in PFC revenue to any third party (14 CFR § 158.49(c)).

In addition, a covered air carrier that fails to comply with 14 CFR § 158.49(c), or causes an eligible public agency to incur costs to recover or retain payment of PFC revenue, must compensate the public agency for those costs.

Chapter 9. Application Oversight

Section 9.1 Overview

- 9.1.1 **General.** This chapter identifies the responsibilities of public agencies and of the FAA in the oversight and monitoring of PFC applications. This includes the actions that must be taken by public authorities in the case of changes in the levels of air carrier activity and other factors that affect the rate of PFC collections. It also includes FAA oversight of changes in PFC collection periods and other factors.

Section 9.2 Public Agency Responsibilities

- 9.2.1 **General.** The public agency must monitor PFC collections and regulatory time frames to ensure compliance with the regulation (*see* Appendix C). The public agency also must ensure that any required use applications for impose-only projects are submitted on time. The failure to submit a use application on time will result in the automatic termination of PFC collections for the particular impose-only project. Once the FAA has approved the projects in an application for collection, collection and use, or use, the public agency must ensure that:

1. Projects are implemented within the time frames specified by the PFC Regulation.
2. Adequate progress is made toward project completion.
3. No excess PFC revenues are collected, but if they are, prompt action is taken to use the revenue in accordance with the 14 CFR § 158.39.

Complying with these responsibilities may require a change in the PFC charge expiration date and amendments of approved projects, including the deletion of projects. In some cases the public agency will have to submit a new application, particularly for the authority to use collected PFC revenue. If the public agency does not submit a use application in compliance with the regulation, then PFC collections for impose-only projects will be terminated. If it does not undertake projects that have received use authority, in compliance with the regulation, PFC collections may be terminated, following the resolution process, and AIP funding may be reduced.

The FAA Airports office may, as appropriate, notify public agencies of time frame requirements in an effort to aid the public agency in meeting these regulatory requirements.

9.2.2 Duration of Authority to Impose a PFC Before Project Implementation.

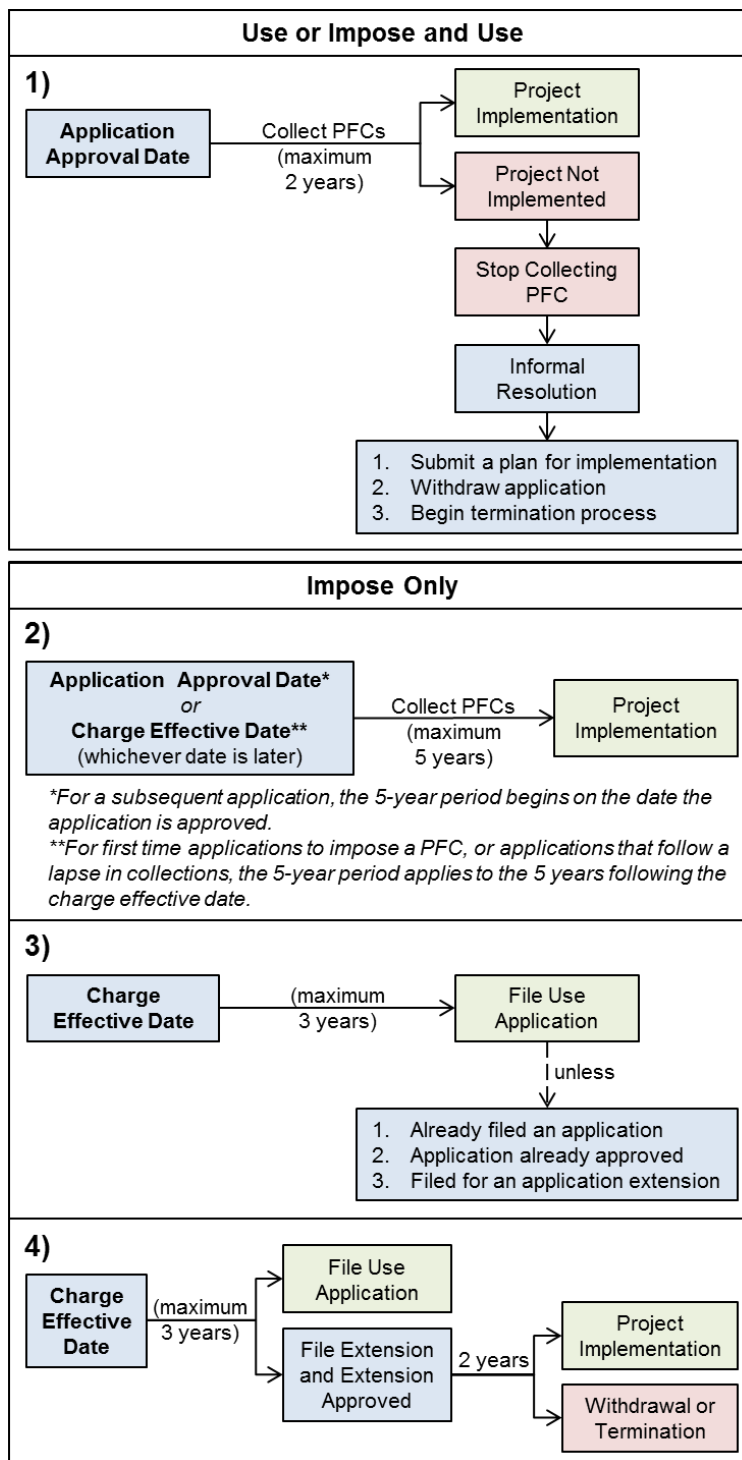
- 9.2.2.1 **Timing.** A public agency may not impose a PFC for an approved project that has not been implemented, beyond the earlier of the following dates (*see* 14 CFR § 158.33):

- 9.2.2.1.1 Two years after the approval to use PFC revenue on an approved project, if the project has not been implemented (for projects approved for use or impose-and-use).
- 9.2.2.1.2 Five years after the charge effective date, or the impose application approval date, if an approved project has not been implemented. For first time applications to impose a PFC, or applications that follow a lapse in collections, the five-year period applies to the five years following the charge effective date. For a subsequent application, the five-year period begins on the date the application is approved (for projects approved for impose with a subsequent use approval).
- 9.2.2.1.3 The authority to impose a PFC following impose-only approval will automatically expire, without further action by the FAA, on the following dates:
1. Three years after the charge effective date (or for a subsequent application, three years after the approval date), unless:
 - a. The public agency has filed an application with the FAA Airports office for approval to use PFC revenue for an eligible project
 - b. An application to use PFC revenue has been approved
 - c. The public agency seeks from and is granted by the FAA an extension of up to two years (*see* Chapter 10 for more information on the extension process)
- 9.2.2.1.4 If a full two-year extension has been granted, a public agency may not impose a PFC beyond five years after the charge effective date (or for a subsequent impose or impose-and-use application, five years after the approval date (*see* Paragraph 5.2.1.2.2)), unless the public agency has obtained project use approval. In this case, if the use approval has been obtained, but implementation has not taken place, Paragraph 9.2.2.1.2 applies and termination is required. Submission of a use application within three years of the charge effective date technically meets the requirements of Paragraph 9.2.2.1.3 (1), whether or not the FAA Airports office finds that the application is substantially complete. However, the use application must be, at a minimum, a properly completed and signed FAA Form 5500-1. Should the FAA determine that the application is not substantially complete, the FAA's letter will specify the additional attachments and information that are required to obtain a substantially complete finding. The automatic expiration of collection authority for an impose-only project prevents the continued collection of PFCs by the public agency for that project without expenditure for the purposes intended. Although it has been the FAA's practice in the past to provide notification of such an action through an administrative amendment in the next available FAD for the public agency, such administrative

amendments are not timely and may be difficult for the public agency to notice. Therefore, current practice is to notify the public agency of an automatic expiration of collection authority for projects through the issuance of a separate administrative amendment (*see* Chapter 13).

Figure 9-1. Duration of Authority to Impose a PFC Before Project Implementation

Upon approval, a public agency may impose PFCs for a certain period of time (depending on the application type) before project implementation. The diagrams shown in scenarios 1 through 4 correspond to Paragraphs 9.2.2.1.1 through 9.2.2.1.4, and show the maximum amount of time a PFC can be imposed before project implementation, application extension, withdrawal or termination.



9.2.3 Duration of Authority to Impose a PFC After Project Implementation.

9.2.3.1 **General.** A public agency that has begun implementation of an approved project is authorized to impose a PFC until one of the following actions occurs (*see* 14 CFR § 158.31):

1. The charge expiration date is reached (14 CFR § 158.3). If the public agency expects that insufficient funds will be collected by the charge expiration date as a result of the rate of collection being less than anticipated, the public agency must notify collecting carriers of its intent to extend the collection period. Similarly, if the public agency anticipates that excess funds will be collected before the charge expiration date, it must shorten the collection period by notice. (Both of these notifications are referred to as ‘43c actions’ since they are authorized by 14 CFR § 158.43(c) of the regulation.) The public agency must submit a copy of this notification to the appropriate FAA Airports office. The FAA Airports office will issue an acknowledgement of the change in charge expiration date and enter the data in the SOAR database. APP-510 will publish the change in its monthly notice of PFC approvals on the FAA’s public website. Every effort should be made to provide the acknowledgement of the extension of duration at least 60 (but no less than 30) days in advance of the current charge expiration date to allow for sufficient notification time (*see* Paragraph 7.2.5).
2. The total PFC revenue collected (plus interest thereon) equals the allowable cost of the approved project. If the authorized collection amount is inadequate as a result of an increase in allowable project costs, the public agency must initiate an amendment to the approved PFC application that increases the total approved PFCs to be collected (*see* Chapter 11 or Chapter 12). In some cases, the FAA may strongly encourage the public agency to undertake an amendment action if the project cannot otherwise be completed:
 - a. The authority to collect the PFC is terminated by FAA in accordance with Chapter 15 of this Order; or
 - b. The FAA determines that the public agency is in violation of 49 U.S.C 47524 and 47526, airport noise and access restriction statute (*see* Paragraph 5.3.4.4). That statute’s implementing regulation, 14 CFR Part 161, provides separate termination procedures. Once the FAA issues a final decision terminating collection authority, the public agency must notify the air carriers to stop collecting the PFCs, following the procedures outlines in this Order.
3. Public agency actions to monitor PFC duration of implementation for PFC decisions. The FAA has provided tools for a public agency to use to monitor its implementation and duration of its PFC program through the

SOAR database. In particular, a public agency has access to the Revenue page in SOAR for more detailed information about the system. The FAA recommends that public agencies refer to the SOAR User Manual.

9.2.4 Adequate Progress of Project.

- 9.2.4.1 From initial approval. After the public agency receives use authority, the approved project must be implemented as follows:
 - 9.2.4.1.1 Within two years of the charge effective date (on first time applications, or on applications restarting after a break in collections) (*see* 14 CFR § 158.33).
 - 9.2.4.1.2 Within two years of the decision date for applications with a charge effective date more than 60 days in the future (applications submitted after first time applications where there has not been a break in collections) (*see* 14 CFR § 158.33).
 - 9.2.4.1.3 After implementing the project, the public agency should monitor the physical project schedule to ensure that the work does not languish. If the public agency decides a project is no longer needed or cannot proceed to completion, it must issue an amendment to its PFC application to delete the project, and return to the PFC account the PFC funds that were used on the project (*see* 14 CFR § 158.37).
- 9.2.4.2 In cases where the FAA Airports office determines that insufficient progress has been made toward implementation of a project approved for use authority, it must notify as soon as possible and make a recommendation to APP-510 to begin termination proceedings through the informal resolution process (*see* 14 CFR § 158.83). The FAA may conclude that project implementation during this informal resolution period is sufficient to meet the implementation requirement, thus ending the need to pursue termination. In other cases, actions ordinarily associated with informal resolution may have taken place before the FAA intervenes. If these actions have not been successful, the FAA Airports office may need to notify headquarters. If the Associate Administrator for Airports and the Administrator concur with their negative assessment, the FAA Office of Airports shall begin termination proceedings under subpart E of the PFC Regulation (*see* Chapter 15). *The FAA has no statutory or regulatory authority to grant extensions on projects that have received use authority but which have not met the required implementation dates outside of the termination process noted above in subpart E.* (*see* 14 CFR §§ 158.31 and 158.33).

- 9.2.5 **Charge Expiration Date or Approved PFC Amount.** As noted above in Paragraph 9.2.3.1 (actions 1 and 2), a public agency is approved by the FAA to collect a PFC until the earlier of: 1) the legal charge expiration date, or 2) the date on which the amount approved has been collected. Public agencies are cautioned that, because the FAA issues a monthly list of airports collecting PFCs to the air carriers and the public,

inattention to the legal charge expiration date may lead to an inadvertent stoppage in collection. The public agency's approved collection amount is not as readily tracked and may pass, leading to the inadvertent collection of excess PFC revenues. Accordingly, the FAA strongly encourages public agencies to carefully track PFC approvals, amendments, changes in duration, and revenue.

9.2.6 **Excess Revenue.**

9.2.6.1 Any time a public agency collects (including any interest earned) more PFC revenue than it has authority to collect, it has excess revenue (*see* 14 CFR § 158.39). Excess revenue may be associated with several factors, such as:

9.2.6.1.1 Over-collection may take place when a public agency fails to account for any interest earned on PFC revenues it has collected. It may also take place when collections are faster than expected and the public agency fails to change charge expiration date or file a new application.

9.2.6.1.2 Deleted projects, as well as expired, terminated, or completed projects may result in the collection of excess revenues, as when a public agency fails to account for the impact these actions have on the remaining balance of collection authority.

9.2.6.1.3 The sale of land purchased with PFC revenues may result in excess PFC revenues. A common example of this is when a public agency purchases land for noise mitigation and later resells it. Land must be sold at its fair market value and the proceeds for the land sale must be returned to the PFC fund.

9.2.6.1.4 PFC program income is typically the generation of revenue associated with the lease of land purchased with PFC revenues, but is not limited to that. Rents associated with such leases must be equal or exceed fair market value and the proceeds returned to the PFC fund.

9.2.6.2 The public agency must monitor its collections and take appropriate, and timely, action to prevent the collection of excess PFC revenues. The continuation of the authority to impose a PFC is contingent upon the sum of i) PFC revenue plus ii) interest on PFC balances equaling allowable project costs.

9.2.7 **Excess Revenue Plan.** The PFC Regulation specifies that within 30 days after the authority to impose a PFC expires or is terminated, if excess PFC revenues have been collected, the public agency must present to the FAA Airports office a plan for using the excess PFC revenues. The plan must include a timetable for an application for authority to use the PFC revenue on a project, if applicable. If the public agency fails to submit such a plan or submits an unacceptable plan, the FAA Airports office will recommend to APP-510 that it authorize an offset of AIP apportioned funds. APP-510 will coordinate this recommendation with APP-520 and consult with the Associate Administrator for Airports and the Administrator (*see* 14 CFR § 158.39(d)). The Associate Administrator,

in consultation with the Administrator, will make a final determination on the adequacy of the plan and whether to offset AIP funds. The amount of the reduction will be equal to the excess collected or not used as approved.

9.2.8 **Offset of AIP Funding.**

9.2.8.1 **General.** In certain cases, the FAA must offset excess PFC revenues by reducing the amount of AIP funds otherwise available to the public agency under 49 U.S.C. § 47114 (*see* 49 U.S.C. § 40117(h)(3) and 14 CFR §§ 158.39 and 158.87). Such a reduction will not constitute a withholding of approval or a grant application or payment of funds under an approved grant within the meaning of 49 U.S.C. § 47111(d) (14 CFR § 158.87(c)).

9.2.8.2 **Process.** Once the amount of offset is determined by APP-510, it will notify APP-520, which will implement the reduction.

9.2.9 **Restriction on the Authorization to Re-Impose a PFC.** Whenever the authority to impose a PFC for projects is expired, is terminated under the conditions described in this chapter, or is deleted or withdrawn under threat of termination for non-implementation or to avoid automatic expiration, the Administrator will not grant new approval to impose a PFC for that project in advance of the implementation of that project. This requirement ensures that public agencies cannot impose a PFC for a project indefinitely by filing successive applications for authority to impose a PFC for that project.

9.2.10 **Notification of Carriers.** If the public agency's authority to impose a PFC expires because of its failure to submit a use application within the specified time frames, the public agency must provide the FAA Airports office with: 1) a list of the air carriers operating at the imposing airport; and 2) a list of air carriers that have remitted PFC revenues in the preceding 12 months. The FAA Airports office will notify each listed carrier of the expiration, its effect on total approved collections, and the collection expiration date. If the expiring project is the sole justification for ongoing PFC collections, this notice by the FAA would require the air carriers to terminate PFC collections on a specific date no later than 30 days after the date of the written notice (14 CFR § 158.41(c)). The FAA Airports office will also provide a copy of notice to APP-510. The notice will be in the format prescribed in the PFC intranet document site, as appropriate.

Section 9.3 FAA Responsibilities – Demonstration of Federal Oversight

9.3.1 **General.** After the FAA Airports Office has approved a PFC application, the FAA will ensure that:

1. Projects are making adequate progress toward implementation and completion.
2. PFC revenues are not spent on unapproved projects.
3. Airports do not generate excess PFC revenues.

9.3.2 **FAA Monitoring of Project Costs.**

- 9.3.2.1 As a best practice, the FAA Airports Office should periodically compare the approved costs in the FAD, as amended, to the public agency's quarterly report (*see* 14 CFR § 158.63).
- 9.3.2.2 If there is an indication that excess PFC revenue may be collected before the authorized charge expiration date or, alternative, is likely to total less than specified in the application approval, the FAA Airports office will notify the public agency that the authority to impose a PFC will expire. The notification should be at least nine months in advance of the time the discrepancy in collections is estimated to occur, although the failure of the FAA to provide such notice does not mitigate the public agency's responsibility regarding excess PFC collections. The public agency may choose to respond through one or more of the following actions:
1. Reduce or extend the collection period by notice (*see* 14 CFR § 158.43(c) and Paragraph 7.2.5)
 2. Amend its application to reduce the level of collection (*see* 14 CFR § 158.37 and Chapter 12)
 3. Amend existing approved projects, including accelerated retirement of outstanding PFC financed bonds (*see* 14 CFR § 158.37 and Chapter 11 or Chapter 12)
 4. Submit a new application to use revenues that would otherwise be in excess (*see* Paragraph 9.2.7)
- 9.3.2.3 If the FAA finds that excess revenues have already been collected, or if authority to collect a PFC has expired or been terminated under 14 CFR § 158.33 (*see* Paragraph 9.2.3), the public agency must submit a plan on how it will use accumulated PFC revenues (*see* 14 CFR § 158.39 and Paragraph 9.2.7).

Chapter 10. Extension of Time to Submit a Use Application

Section 10.1 Overview

10.1.1 **General.** Public agencies may request extensions of time to submit a use application only for those projects with impose-only authority (*see* 14 CFR § 158.35). A public agency must submit an application to use PFC revenue no later than three years after the charge effective date (or approval dates as discussed in Paragraph 5.2.1.2, or its authority to collect PFCs for that project will automatically expire. However, the public agency may request one extension of this deadline, provided that the public agency receives FAA approval to use PFC funds for the project no later than five years after the charge effective date (14 CFR § 158.33(c)). The FAA has no other authority to extend regulatory deadlines for application submissions nor can it approve the use of PFC funds for projects beyond the five year limitation (*see* 14 CFR §§ 158.31 and 158.33).

Section 10.2 Local Notice

10.2.1 **Local Notice.** The public agency must publish a notice in a local newspaper of general circulation at least 30 days before it submits a request for an extension to the FAA. This notice must include information on the progress of the application to use PFC revenue, a revised schedule for obtaining use approval, and the public agency's reasons for the delay in submitting the application. The notice must also include a request for public comment on the extension. The public agency is not required to consult the air carriers about a request for an extension (14 CFR § 158.35(a)).

Section 10.3 Request for Extension

10.3.1 **Request.** The public agency's request for an extension must be submitted to the FAA at least 120 days prior to the automatic expiration date (14 CFR § 158.35(b)). This request must include the items described in Paragraphs 10.3.2 through 10.3.8 below and any additional information requested by the FAA (*see* also Paragraph 2.2.11).

10.3.2 **Description of Progress.** The request must include a description of the progress on the use application to date (14 CFR § 158.35(b)(1)). This description must include information on application formulation meetings (planned or held), carrier consultation meetings (planned or held), and environmental, airspace, or ALP determinations and approvals (needed or received).

10.3.3 **Schedule.** The request must include a revised schedule for submitting the application (14 CFR § 158.35(b)(2)). This schedule must allow for the submission of the use application before the end of the requested extension and at least 120 days before to the five-year use application approval deadline described in 14 CFR § 158.33(c)(2)(*see* also Paragraph 5.2.1.2).

10.3.4 **Explanation for Delay.** The request must include an explanation of the reasons for the delay in submitting the application (14 CFR § 158.35(b)(3)).

- 10.3.5 **Summary Financial Report.** The request must include a summary financial depicting the total amount of PFC revenue collected plus interest, the projected amount to be collected during the period of the requested extension, and any public agency funds used on the project for which reimbursement may be sought (14 CFR § 158.35(b)(4)).
- 10.3.6 **Carrier Consultation.** The regulation does not require the public agency to conduct further consultation with the carriers at this time. However, the public agency may always engage in additional carrier consultation and, in most instances, the public agency is encouraged to do so. If there is any further consultation with air carriers operating at the airport, the public agency must include a summary of the consultation in its request for an extension (14 CFR § 158.35(b)(5)).
- 10.3.7 **Local Notice Comments.** The request must include a summary of the comments received in response to the local notice (14 CFR § 158.35(b)(6)). Although not required by regulation, the public agency may wish to provide its reasons for proceeding in the face of any negative comments received.
- 10.3.8 **Confirmation and Validation of Alternative Projects.** The request shall include a confirmation that the alternative projects listed in the ROD are still viable in order to meet the requirements for alternative uses in 158.29(a)(1)(vii) and to ensure that further collections will not result in excessive accumulation of PFC revenue in accordance with 14 CFR § 158.35(c)(3).

Section 10.4 FAA Review and Decision

- 10.4.1 **Review.** The FAA Airports office will notify APP-510 in writing when a request for extension is received. The issuance of extensions has not been delegated to the FAA regions. The FAA Airports office shall review the public agency's request for an extension, in consultation with APP-510, as follows:
- 10.4.1.1 **Good Cause.** The FAA Airports office will analyze the public agency's request, including its schedule in the approved application and the summary of comments received as a result of the local notice and any consultation meetings. This analysis will be used by the FAA Airports office to determine if the public agency has shown good cause for the delay in applying for the authority to use PFC revenue (*see* 14 CFR § 158.35(c)(1)). If public agency's reasons for delay include a delay in processing environmental, airspace or ALP requirements, the FAA Airports office must determine if the public agency has proceeded with diligence or that the delays are the result of the public agency's inaction. If the FAA Airports office recommends the disapproval of the request because there is not good cause, a narrative statement that explains the basis of the recommendation must be attached to the Extension Decision package.
- 10.4.1.2 **Schedule.** The FAA Airports office will determine if the public agency's revised schedule for submission of the application is satisfactory. The schedule must allow for application processing (120 days), approval, and

project implementation within five years of the charge effective date or approval date, as applicable (*see* 14 CFR §§ 158.31, 158.33, and 158.35). If the public agency's schedule is not satisfactory, the FAA Airports office must disapprove the extension request and explain the deficiencies in a narrative statement attached to the Extension Decision package.

- 10.4.1.3 **Collection.** The FAA Airports office will review the summary financial report to determine if further collection will result in excess PFC revenue. The FAA Airports office will recommend a revised charge expiration date if it determines that excess PFCs have been collected (*see* 14 CFR § 158.35(c)(3) and Paragraph 8.2.3). A calculation sheet or narrative statement, as applicable, will be attached to the Extension Decision package.
- 10.4.2 **Decision.** The FAA has 90 days from the receipt of the request for extension to advise the public agency in writing of the FAA's approval or disapproval (14 CFR § 158.35(d)).
- 10.4.2.1 **Recommendation.** The FAA Airports office will review the public agency's request on the basis of the criteria in Section 10.3 and will forward an Extension Decision package to APP-510 no later than 45 days from the date of receipt of the request for coordination and issuance. The Extension Decision package will include a memo recommending the approval or disapproval of the public agency's request and recommending the duration of the extension (which may vary from the duration requested by the public agency based on the assessment in Section 10.3), any narrative statements or calculation sheets produced as a result of the review of the request, a draft approval/disapproval letter, and a copy of the public agency's request. In determining an extension date, the FAA needs to ensure that application approval and project implementation will begin within five years of the charge effective date (or date of impose application approval. See the PFC intranet document site for the formats of the approval and disapproval letters.
- 10.4.2.2 **Washington Coordination.** APP-510 will coordinate the Extension Decision package for the Associate Administrator of Airports signature and will issue the approval or disapproval letter to the public agency.
- 10.4.2.3 **Disapproval.** If the public agency's request for extension is disapproved, the FAA will include the reasons for the disapproval in its letter to the public agency. The letter must also inform the public agency that PFC collection authority for the project will expire three years from the charge effective date (or three years from the date of impose application approval) unless a use application is received by that time. If a use application has not been received before that date (*see* Paragraph 9.2.2), the FAA will send a letter (described in Paragraph 9.2.10), to the carriers notifying them that collection authority for the project has expired, along with information about the effect of the expiration on total PFC collections and the duration of collections.

- 10.4.2.4 In some cases, the public agency may wish to amend an application to withdraw the expiring project in advance of its expiration (*see* Chapter 11). This action is allowable and would preclude the need for the FAA to take additional action with regard to the notice to carriers required by 14 CFR § 158.33(d). However, this action would not exempt the public agency from the requirements of Paragraph 158.33(e), which requires the implementation of the project before the FAA grants approval for new PFC collections. Any excess collection that takes place because of the withdrawal of a project must be addressed as described in Paragraph 9.2.7 of this Order.

Chapter 11. Amendments Requiring Consultation and Public Notice

Section 11.1 Overview

11.1.1 General. Four types of amendment actions require consultation and public notice and six types of amendment actions do not require consultation and public notice. In addition, there are two types of actions where the FAA may issue an administrative amendment. These amendments apply to both applications and notices of intent. The following lists all of these amendment types (*see* 14 CFR § 158.37):

1. Amendments that Require Consultation and Public Notice (Chapter 11)

- a. Increase project > 25% if original amount => \$1,000,000
- b. Increase project by any % if original approved amount < \$1,000,000 and amended amount => \$1,000,000
- c. Change the scope of the project
- d. Increase in the PFC collection level

2. Amendments that Do Not Require Consultation and Public Notice (Chapter 12)

- a. Decrease in the PFC collection level
- b. Decrease the total amount of revenue for a project.
- c. Increase project by 25 % or less of the original approved amount , if > \$1,000,000
- d. Increase project by any % if original approved amount < \$1,000,000 and amended original approved amount < \$1,000,000 and amended amount will remain < \$1,000,000
- e. Increase project by any % if original approved amount < \$1,000,000 and amended amount will remain < \$1,000,000
- f. Establish, amend, or delete an excluded class of carriers
- g. Delete an approved project

3. Administrative Amendments (Chapter 13)

- a. Change in imposed PFC amount when considering Use Authority
- b. Automatic expiration of Impose only project

This chapter provides direction on the applicability of and requirements for amendments that require air carrier consultation and public notice and comment processes. Chapter 12

provides direction for amendments that do not require consultation and public notice. Chapter 13 provides direction on administrative amendments.

Whether the proposed amendment contains actions that require consultation and public notice or not, both types may be submitted in the same request. The procedures to amend a PFC decision apply regardless of whether the original decision was issued by FAD or LOA.

Unlike the AIP program, the PFC program does not limit the amount of funding for a PFC project that can be increased by amendment. However, different amendment procedures apply to different amendments, depending on the original approved PFC amount.

Section 11.2 Amendments That Require Consultation and Public Notice

11.2.1 Increase a Project By More Than 25 Percent If the Original Approved Amount was Equal to or Greater Than \$1,000,000. If the original approved PFC amount (pay-as-you-go, capital, and financing costs) was equal to or greater than \$1 million and the proposed amended PFC amount would be at least 25 percent greater, the public agency must undertake air carrier consultation (including sufficient advance notice and sufficient detail in the notice to make clear the nature and magnitude of the proposed increase in total collection authority) and a public notice and comment process before it submits the amendment request to the FAA. If the proposed amended amount is less than 25 percent more than the original approved amount, the public agency does not need to undertake air carrier consultation and a public notice and comment process (*see* 14 CFR § 158.37(b)).

Once that 25 percent threshold is reached, any further amendment request to increase the PFC amount of the project will require that the public agency again undertake air carrier consultation and public notice.

11.2.2 Increase a Project By Any Percentage If Original Approved Amount was Below \$1,000,000 and Amended Amount is Equal to or Greater Than \$1,000,000. If the original approved PFC amount (pay-as-you-go, capital, and financing costs) was less than \$1 million and the proposed amended PFC amount would be equal to or greater than \$1 million, the public agency must undertake air carrier consultation and a public notice and comment process regardless of the proposed percentage increase above the original approved amount. In addition, the public agency must undertake air carrier consultation and public notice before submitting any subsequent amendment requests for this project so long as the amended PFC amount remains equal to or greater than \$1 million (*see* 14 CFR § 158.37(b)).

11.2.3 Change the Scope of a Project. A proposed amendment to change the project description or the method of financing a project requires the public agency to undertake air carrier consultation (including sufficient advance notice and sufficient detail in the notice to make clear the nature and magnitude of the proposed increase in total collection authority) and public notice and comment processes before submitting the amendment request to the FAA. A scope change amendment request must be submitted as soon as

possible after the public agency decides to change the scope; the public agency cannot wait until the project is being closed to request such an amendment. Totally deleting a PFC project does not require air carrier consultation or public notice (*see* 14 CFR § 158.37(b)).

11.2.3.1 Description Change. This type of change involves a qualitative or quantitative increase or decrease to an element of work already approved in a project. Public agencies may not add work elements or facilities to a project by amendment; these types of changes must be requested in a new application (*see* 14 CFR § 158.37(a)).

For example, suppose the original approved project involved the rehabilitation of 2,500 square yards of Apron A. The public agency cannot amend the project by reducing the area of rehabilitation of Apron A to 1,500 square yards and adding the rehabilitation of 1,000 square yards of Apron E, even though the total quantity did not change. The rehabilitation of Apron E would need to be submitted as a new project in a new application. The public agency could amend the project to increase or decrease the area of Apron A. The consultation and public notice requirements of this section would apply to the amendment.

Similarly, public agencies may not change the justification for a project by amendment. If the justification for the project changes, the public agency must delete the current project and submit the new project, with its new justification, in a new application (*see* 14 CFR § 158.37(a)).

As an example of this second type of project change, suppose the original project approved the acquisition of five parcels of land for noise mitigation. However, before the parcels are acquired, the noise exposure maps change and they are no longer eligible for noise mitigation acquisition; they ordinarily would be deleted from the PFC acquisition. But the public agency has also recently completed a master plan study and, as a part of that study, has determined that the land is needed for future airport development. Since the public agency still has a use for the land, it wants to amend the project to change its justification from noise mitigation to airport development. In this case, the public agency must undertake two actions: (1) submit an amendment to delete the five parcels from the original application (this action does not require consultation and public notice) and (2) submit a new application for the acquisition of the five parcels for future airport development. Without these two actions, the FAA would not have enough information to determine if the acquisition of these parcels for airport development purposes is eligible, justified, and meets PFC objective (and, if applicable, significant contribution) requirements.

11.2.3.2 Financing Change. If a public agency needs to change how it plans to use PFC revenue for a project, the public agency must request a PFC amendment to the project, even if the amount of PFC revenue being used on the project

remains the same or decreases. This change in the project is considered a change of scope and the public agency must undertake air carrier consultation and public notice before submitting the amendment request (*see* 14 CFR § 158.37(a)(iii)).

For example, suppose the public agency originally intended to issue a debt instrument to pay for the project and use its PFC revenue to pay the capital and debt service costs. Since the project was originally approved, the public agency has determined that it needs to leverage its debt capacity on other projects and so has decided not to issue debt for the original project and, instead, to use PFC revenue to pay the project costs as they come in (pay-as-you-go). This will likely mean that the amount of PFC revenue needed to complete the project will be less (no debt service costs). However, this change is considered a change of scope and so the public agency must undertake air carrier consultation and public notice and comment processes before submitting an amendment request to the FAA.

- 11.2.4 Increase the PFC to be Collected from Each Passenger.** The public agency must consult with air carriers and undertake a public notice and comment process before submitting an amendment request to the FAA that proposes to increase the level of PFC to be collected from each enplaned revenue passenger (for example, from \$2 to \$3 or from \$3 to \$4 or \$4.50) (*see* 14 CFR § 158.37(b)). Any new charge level will be effective on the first day of a month that is at least 30 days from the date the public agency notifies the air carriers after the approval of the amendment by the FAA (14 CFR § 158.37(d)). The public agency's notice to the carriers must contain the change level effective date and, if necessary, revised charge expiration date.

To increase the PFC level charged to passengers, the public agency must request that the PFC levels of the projects in the application be amended to the higher level. However, there are additional requirements that a project must meet to collect at a \$4.00 or \$4.50 PFC level and it is possible that not all projects will be able to qualify at that higher level (*see* 14 CFR § 158.37(b)) and Chapter 4 and Chapter 5 for discussions of project requirements for collection at a level of \$4.00 or \$4.50).

Amendments to decrease the PFC level, either of projects or the application or both are discussed in Chapter 12, because that type of amendment does not require air carrier consultation and public notice.

Section 11.3 Content of Amendment Request

- 11.3.1 Forms.** The PFC application amendment and NOI form (FAA Form 5500-1) is available at the PFC internet document site. A separate form must be submitted for each application.

11.3.2 Required Information

11.3.2.1 **Discussion of Proposed Changes.** The public agency must provide a written discussion of each proposed change in the amendment request (*see* 14 CFR § 158.37(b)).

11.3.2.1.1 **Amendment Report.**

1. If the amendment action includes a proposed increase to the PFC level or the PFC amount for a project or projects, the public agency must include a completed 'Amendment Request Form Report' in its amendment package. The forms for this report are available to be downloaded from SOAR. The report lists every project in the application, along with its currently approved PFC amount, and allows the public agency to input the revised amounts. The report also allows the public agency to indicate a proposed change to a PFC level for a project, as well as a proposed change to the charge expiration date for the application as a whole. In addition, the report provides spaces for a public agency to show changes to a project's total cost, as well as the physical start and stop dates, although these are not amendment actions and could be modified outside of the amendment process.
 2. If the amendment action includes changes to the PFC level or PFC amount as discussed in Section 11.2 above and the public agency chooses not to use the Amendment Request Form Report, the public agency must submit its own spreadsheet or other document that clearly show each project being amended as well as the current approved PFC level, current approved PFC amount (broken out as pay-as-you-go, bond capital, and financing), and, as applicable, the proposed amended PFC level and the proposed amended PFC amount (again broken out as pay-as-you-go, bond capital, and financing). If the public agency chooses to provide its own spreadsheet, it must use the exact project title from the FAD or LOA.
- 11.3.2.1.2 If the amendment action includes proposed changes in the scope of a project or projects, the public agency must provide a document with the project name, the current approved project description, and the proposed amended description, and highlight the proposed changes.
- 11.3.2.1.3 If the amendment action includes proposed changes in the financing of a project or projects, the public agency must provide a document with the project name, current financing information and the amended financing information, including all supporting details.
- 11.3.2.1.4 If the amendment is intended to replace public (tax-exempt) debt with private (taxable) debt, and the airport has existing debts backed by PFC revenues (whether pledged or merely committed), then the sponsor may request a PFC amendment to increase the collection authority in order to pay a slightly higher coupon rate on private (taxable) debt required to replace public (tax-exempt) bonds. However, the FAA must be able to make a determination on

the reasonableness of any such action. Before approving such an amendment, by law the FAA would have to be able to make a determination that the cost is reasonable. The new debt structure would have to be competitive in nature (i.e., with the debt instruments publicly marketed to secure the most favorable rates possible), and the FAA would consider the historical difference in coupon rates between public (tax-exempt) and private (taxable) debt as part of this determination, as well as other considerations such as maturity period, amortization schedules and other criteria. Any such amendments would require airline consultation because it would represent a change in the method of financing the project. It would be imperative that the specific terms of such changes in debt structure be clearly presented to the airlines in the notice of consultation as well as in the actual amendment request.

- 11.3.2.2 Evidence of Consultation with Carriers Including Certifications of Agreement or Disagreement.** A public agency that proposes to amend a PFC application, as detailed in Section 11.2 above, must consult with the air carriers operating at the airport. The public agency must send written notice to those air carriers that constitute a significant business interest at the airport offering the opportunity for a consultation meeting. This offer shall specify the date and location of a meeting at which the public agency will present information on the amendment. The consultation meeting between the public agency and the air carriers must be held no sooner than 30 days, nor later than 45 days, after issuance of the written notice (*see* 14 CFR § 158.37(b)).

The public agency may provide information on the project either before or during the consultation meeting and must include, at a minimum: the application to be amended, with a description of the approved projects in that application; the projects to be amended; the original approved project amounts and any amounts approved during a subsequent amendment process; the proposed changes (financial, scope, or both); the revised financial plan; and the justification for each proposed change (*see* 14 CFR § 158.37(b)). The air carriers must be given a minimum of 30 days to provide a certificate of agreement or disagreement before the public agency submits the amendment to the FAA. The notification letter must also identify the point of contact and address for returning the certifications of agreement or disagreement. If one or more air carriers disagree with any of the proposed amendment actions, the public agency must include those reasons in its submission to the FAA. The public agency must also provide a written response to each disagreement and its reasons for continuing in the face of such opposition. Section 3.2 describes the air carrier consultation process in greater detail.

- 11.3.2.3 Public Notice and Opportunity for Comment.** A public agency that proposes to amend a PFC application as detailed in Section 11.2 must provide a public notice and opportunity for comment before submitting the amendment request to the FAA. The public notice must identify the application proposed for amendment, all proposed amendment actions, and a brief justification for the proposed changes. Finally, the public notice must

include the public agency's point of contact and the address where any comments may be sent (*see* 14 CFR § 158.37(b)).

The public notice must provide for a comment period of no less than 30 days, and no more than 45 days, after the notice has been published (*see* 14 CFR § 158.24). After the comment period is concluded, the public agency must prepare a written response to any comments that disagree with any or all of the amendment proposals. This written response, as well as a copy of the notice (including verification of publication) and a copy of all comments, must be included in the amendment request submitted to the FAA. Section 3.3 describes the PFC public notice process in greater detail.

11.3.2.4 Justification for the Proposal or Proposals. A public agency that proposes to amend a PFC application as detailed in Section 11.2 above must include the justification for each amendment action in the proposal submitted to the FAA. The justification must detail the nature of the changes, the reasons for the changes, and how the changes meet the requirements of the PFC Regulation Paragraph 158.15 and, if applicable, Paragraph 158.17 (*see* 14 CFR § 158.37(b)).

11.3.2.5 Other Information as Required. The FAA reserves the right to request additional information at any time during the FAA's review and decision process (14 CFR § 158.37(b)(8)).

Section 11.4 FAA Processing and Decision

11.4.1 Analysis of Request. The analysis of an amendment request is similar to, but more focused than, the analysis required for a PFC application. In that regard, the Project Analysis guidelines of Paragraph 5.3.5 will apply in most cases and should be used for the analysis of an amendment request that requires consultation with the air carriers and public notice. The FAA Airports office must support its findings in the Attachment B 'For FAA use' sections. Since an amendment is for changes in a previously approved decision, these changes must be highlighted (*see* 14 CFR § 158.37(b)-(c)). The FAA must give particular attention to the project description, justification, eligibility, PFC objective, and significant contribution, if any of these change as a result of the amendment.

For amendments that raise the charge level from \$3.00 to \$4.00 or \$4.50, the public agency and the FAA must address the airside needs and AIP funding availability as if the request were a new application. For large and medium hub airports, the amendment must support a finding of significant contribution. The FAA must make an affirmative finding that the conditions of the PFC Regulation Paragraph 158.17 have been met before the higher charge level can be approved (*see* 14 CFR § 158.37(c)).

Note that the FAA has 30 days from the day the amendment is received in the mail from the public agency to complete its analysis and issue its determination, substantially less

time than would be available for such findings than with a PFC application (14 CFR § 158.37(d)).

- 11.4.2 **Analysis of Any Comments Received.** The FAA must thoroughly address all air carrier and public notice comments in its analysis. A statement that the FAA concurs in the public agency's responses is not adequate. Rather, the FAA's comments must provide an analysis of the issues raised by the air carriers and the public similar to that conducted under Paragraph 5.3.5.1.8 for PFC applications (*see* the 14 CFR § 158.37(d)).
- 11.4.3 **Adjusting the Duration of Collection.** The FAA will analyze and make any necessary changes to the duration of collection resulting from the amendment and provide the approved dates in its decision letter (*see* the 14 CFR §§ 158.31 and 158.33).
- 11.4.4 **Decision and SOAR Entries.** The FAA Airports office will issue a letter to the public agency outlining the changes approved by the amendment. The letter must thoroughly describe any portion of the request that has not been approved. The letter must be uploaded into SOAR at the same time the SOAR actions outlined above are completed. The letter must be in the format specified in the PFC intranet document site and may be signed by the Regional Airports Division Manager or delegated to the FAA Airports RO/ADO manager.

The FAA office issuing the amendment must also complete all necessary SOAR entries related to the amendment and projects as soon as possible after the issuance of the FAD, preferably within 24 hours of the approval. Decisions that are issued near the end of a month must be uploaded and input into SOAR no later than three working days before the end of the month or the office must notify and make special arrangements with APP-510. This requirement ensures that all PFC actions in the month will be captured in the FAA's reporting to the air carriers and the public. APP-510 cannot update its lists of PFC-approved airports to reflect amendments unless a copy of the FAA's letter to the public agency approving the amendment is uploaded into SOAR in a timely manner. Moreover, the ATA and ATPCO will not update the list of PFC-approved airports for an amendment unless APP-510 has also updated its list. This process ensures that air carriers and others using the list will have verified dates and amounts recorded for each airport, thereby lessening the chance that a public agency will collect beyond the approved time frame or not collect for long enough. It also prevents actions that have not been sanctioned by the FAA, such as a public agency adding a project by amendment or decreasing the approved amount but not changing the charge expiration date to reflect this change.

APP-510 will publish information regarding the amendment in the *Federal Register*, along with the monthly notice of PFC approvals and disapprovals.

Additionally, the public agency is required to notify the carriers with a significant business interest of the changes made by the amendment, including any changes to the charge effective and charge expiration dates. The Public agency must send a copy of the carrier notification to the FAA Airports office (*see* 14 CFR § 158.23).

Section 11.5 FAA Actions for Substantial Carrier or Public Disagreement for an Amendment

11.5.1 FAA Review and Approval or Disapproval. In certain limited cases, the level of complexity or controversy surrounding a PFC amendment action may require that the FAA analysis extend beyond the 30-day amendment decisions deadline (*see* 14 CFR § 158.37(d)). In such cases, the FAA will request that the public agency grant a written waiver to the 30-day requirement.

11.5.1.1 *Federal Register* Notice. Under the circumstances noted above, the FAA Airports office will determine, in coordination with APP-510, whether further public review and comment on the proposed amendment is warranted. If so, the FAA Airports office will prepare a *Federal Register* notice inviting public comment on the amendment using the instructions and format specified in the PFC intranet document site.

11.5.1.2 Approval or Disapproval Recommendation. The FAA Airports office must use the approval or disapproval criteria and processes from Paragraphs 5.3.4 and 5.3.5 to produce an approval or disapproval recommendation.

11.5.2 Headquarters Coordination. The FAA Airports office will notify APP-510 of the air carriers' or public disagreement no later than 15 days after the receipt of the proposed amendment. If the carrier disagreement involves the same objections or issues addressed by the FAA in the original decision, the FAA Airports office will prepare and issue the decision document using the procedures outlined in Section 11.4 of this chapter. If the carrier disagreement involved objections or issues not raised at the time of the original decision, APP-510 will notify the FAA Airports office that additional time is needed to prepare the decision document and will brief ARP senior management. APP-510 will assist with the analysis of the amendment request and comments, following the procedures outlined in Section 11.4.

Chapter 12. Amendments That Do Not Require Consultation and Public Notice

Section 12.1 Overview

- 12.1.1 **General.** This chapter provides direction for public agencies in submitting amendments that do not require consultation and public notice (*see* 14 CFR § 158.37(b)).
- 12.1.2 **To Decrease the PFC Level to be Collected from Each Passenger.** The public agency may choose to decrease the PFC level collected from each passenger. The new PFC level will be effective on the first day of the month that is at least 30 days after the public agency has notified the air carriers of the change (*see* 14 CFR § 158.37(b)(1)(ii)).
- 12.1.3 **To Decrease the PFC Revenues Collected for a Project.** The public agency may, upon project financial review, determine that the PFC revenues approved for collection will exceed the allowable costs of the approved projects. If so, the public agency must submit an amendment to decrease the PFC revenues to be collected. The public agency may decrease the PFCs to be collected for one or more project or reduce the duration of collection of the approved level (*see* 14 CFR § 158.37(b)(1)(ii)).

However, if the decrease in the amount of approved PFC revenues is associated with the change in scope (increase or decrease) of one or more approved projects, the amendment must be processed in accordance with 14 CFR § 158.37(b) and the provisions of Chapter 11 of this Order.

If a decrease in PFC revenues collected will result in an earlier charge expiration date, the amendment notice must be issued no later than 30 days before the new charge expiration date so the FAA can process the amendment and the air carriers can adjust their reservation systems. The FAA recommends that the amendment notice be issued at least 35 days in advance (*see* 14 CFR § 158.43)). Any excess collection that occurs because of the failure to stop PFC collections must be addressed as described in Paragraph 14.3.5 of this Order.

- 12.1.4 **To Increase the PFC Revenues Collected for a Project by 25% or Less.** If the actual allowable project costs exceed the estimates in the PFC application that was approved by the FAA the public agency may increase the PFC revenues to be collected by up to 25 percent without consultation with the air carriers or issuing a public notice. This provision applies only to projects whose original approval was for more than \$1,000,000 (*see* 14 CFR § 158.37(b)(1)(ii)). The 25 percent increase must be applied to the original project approval amount. If these criteria are not met, the amendment must be processed in accordance with 14 CFR § 158.37(b) and Chapter 11 of this Order.

The increase in the approved amount of the project may result in an extension of the charge expiration date. If so, the amendment notice must be issued no later than 30 days before the previous charge expiration date so the FAA can process the amendment and the air carriers can adjust their reservation systems. The FAA recommends that the amendment notice be issued at least 35 days in advance. If a public agency's collection

authority expires before the processing of the amendment is completed, a new PFC application must be submitted.

- 12.1.5 To Increase the PFC Revenues Collected for a Project by Any Percentage.** If the actual allowable project costs exceed the estimates in the PFC application that was approved by the FAA and the original approved amount and the proposed amended amount are both less than \$1,000,000, the public agency may increase the PFC revenues to be collected without further consultation with the air carriers or issuing a public notice. If these criteria are not met, the amendment must be processed in accordance with 14 CFR § 158.37(b) and Chapter 11 of this Order.

The increase in the approved amount of the project may result in an extension of the charge expiration date. If so, the amendment notice must be issued no later than 30 days before the previous charge expiration date so the FAA can process the amendment and the air carriers can adjust their reservation systems using the data in the FAA's monthly report which is posted every month at [Airports PFC Monthly Reports](#) (*see* 14 CFR § 158.43)). The FAA recommends that the amendment notice be issued at least 35 days in advance. If a public agency's collection authority expires before the processing of the amendment is completed, a new PFC application must be submitted.

- 12.1.6 To Establish, Amend or Delete an Excluded Class of Carriers.** The public agency may establish a new class of air carriers to be excluded from the requirement to collect the PFC, may amend an existing excluded class, or may delete an existing excluded class, without consultation with the air carriers or issuing a public notice (14 CFR § 158.37(b)(1)(ii)). The public agency must delete or modify a previously excluded class if the passenger enplanements or the carriers in the class exceed the regulatory one percent limitation.⁵⁰ Any change in excluded air carrier classes will be effective on the first day of a month that is at least 30 days after the date that the FAA approves the amendment (*see* 14 CFR § 158.43)).

- 12.1.7 To Delete an Approved Project.** The public agency may delete an approved project without consultation with the air carriers or issuing a public notice (14 CFR § 158.37(b)(1)(ii)). If a project is deleted from a PFC application, the project must be implemented before it can be resubmitted in a new PFC application (14 CFR § 158.33(e)). Deleting a project will probably decrease the total PFC revenue collected and result in an earlier charge expiration date. If so, the amendment notice must be issued no later than 30 days before the previous charge expiration date so the FAA can process the amendment and the air carriers can adjust their reservation systems using the data in the FAA's monthly report which is posted every month at [Airports PFC Monthly Reports](#) (*see* 14 CFR § 158.43)). The FAA recommends that the amendment notice be issued at least 35 days in advance. Any excess collection because of the failure to stop PFC collections must be addressed as described in Paragraph 14.3.5.

⁵⁰ If applicable, the exclusion must conform to the isolated community exceptions added by AIR-21.

Section 12.2 Content of an Amendment Request

12.2.1 To Delete an Approved Project. A letter must be sent to the FAA to request an amendment. The letter must indicate which PFC application is being amended and contain the following information (*see* 14 CFR § 158.37(b)):

1. A description of the proposed amendment;
2. A table listing each project being amended that shows the approved PFC amount and the proposed PFC amount;⁵¹
3. If the amendment proposes to exempt a new class of carriers from the requirement to collect the PFC, or amend such a class previously approved, a description of the new or amended class of carriers; and,
4. Any additional information that the FAA may require.

Section 12.3 FAA Processing of an Amendment Request and Its Decision

12.3.1 Analysis of Request. The FAA Airports office must review the amendment request and notify the public agency of its decision within 30 days of receiving the notice (14 CFR § 158.37(d)). The review consists of the following steps:

1. Review proposed increases in the PFC amounts for approved projects to confirm that they meet the criteria for an amendment not requiring consultation or public notice;
2. If the original approval of the projects being amended included bond capital and financing and interest costs, confirm that the public agency has shown the pay-as-you-go, bond capital and financing and interest costs for the projects) in its amendment request;
3. If the amendment request proposes a new class of carriers to be excluded from the requirement to collect PFC revenue, or a change in a previously approved excluded class, verify that the class definition is appropriate and that the proposed class meets the criteria for exclusion; and,
4. Verify that any proposed charge expiration date is appropriate for the revised amount of PFC revenue to be collected, based on the current rate of collections. The proposed charge expiration date must be at least 30 days from the date on which the public agency notifies the carriers of the changes to the PFC program. This will not take place until the FAA issues its decision.

12.3.2 Changing the Duration of Collection. Amendments will often require that the public agency establish a new charge expiration date. The public agency's quarterly report can

⁵¹ If the project includes financing and interest costs funded with PFC revenue, the table should list the approved and proposed PFC amounts for pay-as-you-go, bond capital, and financing and interest.

be used to calculate the current rate of collection and determine whether the proposed charge expiration date is appropriate (*see* 14 CFR § 158.63)). If not, the FAA Airports office may establish a different charge expiration date in its approval letter. In establishing a new charge expiration date, the FAA Airports office should consider the following:

1. If collections for the PFC application being amended have expired the charge expiration date cannot be extended. If there is any break in PFC collections, the FAA considers that the existing PFC program has ended. In such a case, the amendment request must be disapproved and the public agency must submit a new PFC application (*see* 14 CFR §§ 158.31 and 158.33)).
2. If the level of PFC charges in the amendment request is different from those currently collected, the new PFC collections cannot be applied to the previous application that was approved for a different level of PFC charges. In such a case, the amendment request must be disapproved and the public agency must submit a new PFC application.
3. If collections for the PFC application being amended have expired and the amendment will result in a decrease in approved PFC collections, this may result in excess PFC collections. If a subsequent PFC application has been approved, these excess collections may be applied to that application and the charge expiration date for that application moved up. If no subsequent PFC application has been approved, the public agency's amendment request must include a plan for how it will use the excess PFC collections revenue. If that plan is not acceptable to the FAA, the FAA may reduce the public agency's Federal Airport Improvement Program apportioned funds (*see* 49 U.S.C. § 40117(h)(3) and 14 CFR § 158.39(d) and Paragraphs 9.2.7 and 9.2.10).

12.3.3 FAA Decision on the Amendment Request. The FAA Airports office must notify the public agency of its decision to approve, partially approve or disapprove the request within 30 days of receiving it (14 CFR § 158.37(c)).

1. If the amendment notice meets the criteria stated above, the FAA Airports office will notify the public agency of its approval or partial approval of the amendment request.
2. If the amendment notice does not meet the criteria stated above, the FAA Airports office will notify the public agency of its disapproval and explain the request's deficiencies. Typically, an amendment notice submitted under 14 CFR §158.37(a) would be disapproved because it does not meet the conditions required by the regulation to be processed without consultation and public notice, in which case it must be processed under the 14 CFR § 158.37(b), or because of a procedural issue such as the failure to include required information. In either case, the FAA Airports office should assist the public agency in correcting the amendment request.
3. In either case, the FAA must notify the public agency by letter, which includes the following items:

- a. An acknowledgement of the receipt of the public agency's amendment notice
- b. An assignment of an amendment number
- c. A statement that the FAA is approving, partially approving or disapproving the amendment notice
- d. If partially approving or disapproving the amendment notice, a statement as to the reason for the partial approval or disapproval
- e. If applicable, a description of the excluded class(es) of carriers being added or amended
- f. If applicable, a table listing the projects being amended, the previously approved PFC amount(s), and the newly approved PFC amount(s),⁵² and
- g. If the application amendment is not the public agency's most recently approved PFC application, include an explanation of the new charge expiration date for the application being amended as well as the rest of the PFC program.

A template for the amendment notice letter is on the FAA's intranet web site at [PFC Guidance Forms](#).

12.3.4 Entries in the SOAR Database. In processing the amendment, but no later than when the notice of decision is issued, the FAA Airports office must enter the following information in SOAR:

1. The type of amendment ("Public Agency no Consultation Necessary" in this case)
2. The date the amendment was received by the FAA
3. The new PFC level approved and the effective date of the change, if applicable
4. The new charge expiration date, if applicable
5. The excluded classes of carriers being added or amended, if applicable
6. Whether the amendment is approved, partially approved or disapproved
7. The decision date, and
8. A pdf copy of the amendment decision letter.

The amendment of a project approved for collection and use in separate applications involves two amendments: one for the "impose" or "impose and use" application in which the collection authority is approved, and another for the "use" application in which

⁵² If the projects include) financing and interest costs funded with PFC revenue, the table should list the currently approved and proposed PFC amounts for pay-as-you-go, bond capital, and financing and interest.

use authority is approved. Therefore, when the amendment of a “use” application is processed, the FAA must also process an amendment to one or more “impose” or “impose and use” applications containing the impose authority for projects in the “use” application, regardless of whether the public agency specifically requested an amendment to the “impose” or “impose and use” applications.

In such a case, the FAA’s will issue two or more separate decision letters. The FAA Airports office must enter the amendment of the “impose” or “use and impose” application first because when it is entered in SOAR for a project with use approval in a separate application, SOAR automatically generates an amendment of the “use” application. The information for the amendment of the “use” application will be automatically generated. However, the actual decision letter for each amendment still must be (s) uploaded.

Similarly, when a public agency submits an amendment for both “use” and “impose and use” projects in the same “impose and use” application, three or more separate amendments must be processed: one or more for the application(s) in which the collection authority for the “use” project(s) being amended is approved, one for the “use” projects in the “impose and use” application being amended, and one for the “impose and use” projects in the “impose and use” application being amended.

The separate amendments are necessary because SOAR automatically generates a “use” amendment for the “use” project when the application under which their collection authority was approved is amended. The amendment for the application under which the collection authority for the “use” project(s) being amended must be entered in SOAR first. Then the amendment for the “impose and use” project in the “impose and use” application would be entered. The FAA will also issue three or more decision letters, which must be entered in SOAR.

12.3.5 FAA Publication of Decision. APP-510 will publish the changes to the public agency’s PFC program in the monthly notice of PFC decisions on the FAA’s public website.

12.3.6 Public Agency Action. After receiving the FAA’s notice of decision, the public agency must notify the carriers of any change to its PFC program as a result of the amendment (*see* 14 CFR § 158.37(d)). The effective date of any new PFC level, or revised charge expiration date must be no earlier than the first day of a month which is at least 30 days from the date the public agency notifies the carriers (*see* 14 CFR § 158.43)). The public agency must provide a copy of the carrier notification to the FAA Airports office.

Chapter 13. Administrative Amendments

Section 13.1 Overview

- 13.1.1 **General.** The primary circumstances that may warrant an administrative amendment are: (1) a use application is submitted that requests a change in the approved impose amount, or (2) one or more projects are deleted because of the automatic expiration of impose authority for one or more projects (this type of administrative amendment does not require consultation), or (3) one or more applications are being commingled in a new application and the existing authority is being terminated.

Section 13.2 Administrative Amendment as Part of a Use Application

- 13.2.1 **General.** Administrative amendments allow the FAA to process a change in the PFC approved amount at the time an impose-only project is approved for use authority. Historically, administrative amendments were contained within the FAD. With the publication of this Order, any administrative amendment must be submitted in a separate letter, in addition to the FAD or NOI. The same process must be followed for administrative amendments to notices of intent.
- 13.2.2 **Process for Applications and Notices of Intent.** Administrative amendments to increase the costs in use applications will be processed in the same way as amendments that require public notice and airline consultation (*see* Chapter 11).

Section 13.3 Administrative Amendment as Part of a Stand-Alone Action

- 13.3.1 **General.** The conditions that result in the automatic expiration of projects are spelled out in the 14 CFR § 158.33(a) and Chapter 9 of this Order. Although such projects expire without any further action by the Administrator, the action must be documented and coordinated. The administrative amendment serves that purpose.
- 13.3.2 **Process for Stand-Alone Actions.** Administrative amendments needed to document impose-only projects whose collection authority has automatically expired are processed in the same way as amendments that do not require public notice and airline consultation (*see* Chapter 12).
- 13.3.2.1 The FAA has no statutory or regulatory authority to extend collection authority for projects that have automatically expired (*see* 14 CFR § 158.33(c)).
- 13.3.2.2 The public agency must monitor project time frames to ensure proper and timely actions are taken to avoid the automatic expiration of impose-only projects. Online reports are available for public agencies to use to identify these types of projects.
- 13.3.2.3 Any impose-only project that automatically expires cannot be approved for use authority until the project is implemented.

Section 13.4 Administrative Amendment as Part of Blending New Application

- 13.4.1 **General.** Blending, or commingling, is the process whereby a public agency combines a single or multiple existing FADs with a new application. This procedure ensures that the public agency has a uniform level of collection among applications. The result is a new application and one or more vacated applications. An administrative amendment is required to document and coordinate the closure of the vacated applications.
- 13.4.2 **Process for Blending Actions.** Administrative amendments to document vacated applications whose collection authority has been approved under a subsequent application are processed in the same way as amendments that do not require public notice and airline consultation (*see* Chapter 12).

Chapter 14. Project Completion and Decision Closeout

Section 14.1 Overview

- 14.1.1 **General.** PFC project and decision closeout are critical parts of the lifecycle of a PFC application and NOI. Closeout actions provide the public with the assurance that the PFC funds collected from them are used to provide critical airport infrastructure, in accordance with the FAA's approvals. There are two aspects to the completion of a PFC decision – project completion (both physical and financial) and decision completion.

PFC project completion takes place when an approved PFC project is both physically and financially completed (including the retirement of any associated debt instruments). In many cases, these completion dates will not coincide, in which case the project is considered complete on the latest of these dates.

A PFC decision is complete once all the projects approved in the decision are completed (both physically and financially) and the approved PFC collection period has reached the charge expiration date. PFC decision closeout is undertaken once all the projects approved in a decision have been completed and consists of an FAA administrative review to ensure that the projects have been completed and that the terms and conditions of the PFC Regulation have been met.

- 14.1.2 **Recordkeeping and Audit.** Public agencies are required to maintain an accounting record for audit purposes for a period of three years after the physical or financial completion of a project, whichever is later. All records must satisfy the requirements of the PFC Regulation and contain documentary evidence for all project costs. Chapter 16 of this Order provides additional instruction on record keeping and audit requirements. If a project is completed more than three years before the closeout of the PFC decision, the public agency must retain a summary record of the project information that will be needed to close out the decision.

Section 14.2 PFC Project Completion

- 14.2.1 **Physical Completion Requirements for Projects That Do Not Involve AIP funds.** If there are any disputes between a contractor and the public agency, the project must not be considered to be complete until the dispute has been resolved. The following conditions to establish physical project completeness specifically apply to projects with no AIP funding:

- 14.2.1.1 **Planning.** A planning project is physically completed when a final report or planning document is accepted by the local governing body. Copies of these documents must be sent to the FAA Airports office for any necessary approvals and to update its planning records.
- 14.2.1.2 **Land Acquisition.** A land acquisition project is completed when the FAA Airports office receives the public agency's notification that it has acquired satisfactory property interest in the designated parcels. The Exhibit A

property map of the airport layout plan must be updated and submitted to the FAA Airports office for approval and to update its records.

- 14.2.1.3 **Acquisition or Rehabilitation of Equipment.** An equipment acquisition or rehabilitation project is completed when the FAA Airports office receives the public agency's notification that the equipment has been delivered and accepted. The notification must indicate the acceptance was in accordance with any applicable specification requirements.
- 14.2.1.4 **Construction.** A construction project is completed when the FAA Airports office receives the public agency's notification of completion in accordance with the plans, specifications, and application assurances.
- 14.2.1.5 **Environmental Mitigation.** The public agency must certify that environmental mitigation measures have been completed in accordance with any applicable environmental approvals.
- 14.2.2 **Physical Completion Requirements for Projects That Include Some AIP Funding.** The physical completion of a project funded with a combination of PFC revenues and any AIP funding must incorporate the grant closeout procedures in the current edition of FAA Order 5100.38.
- 14.2.3 **Financial Completion Requirements.** The conditions for determining financial project completeness are listed below according to the type of project financing:
 - 14.2.3.1 **Pay-As-You-Go Projects.** A pay-as-you-go project is financially completed when the public agency has notified the FAA that it has collected and expended PFC revenue for the allowable cost of the approved project.
 - 14.2.3.2 **Debt-Financed Projects.** The debt-financed project may not be considered completed until the authorized funds have been collected and expended and the PFC portion of the debt obligation has been paid in full. Typically, the PFC portion of the debt obligation will not be paid in full until the debt instrument is paid off. The project may not be considered completed until the debt is paid, as the public agency may choose to refinance the project and amend the amount of debt financing, which may occur many years after the physical completion of the project. The public agency must keep careful records of its debt service relating to PFC projects.
 - 14.2.3.3 **Notification of Financial Completion.** The notification of financial completion can be made in conjunction with the public agency's quarterly reporting activities in the SOAR database, if it provides project completion certifications as noted below.⁵³

⁵³ It is critical that the public agency update and maintain accurate PFC collection and disbursement information in the SOAR database so that it will be able to effectively and efficiently close out both projects and decisions.

14.2.4 **FAA Actions Associated with Project Physical Completion.**

- 14.2.4.1 **Planning.** The public agency may request that the FAA Airports office review the conclusions or recommendations presented in the public agency's final planning document. At its discretion, the FAA may review this document and provide comments to the public agency. The public agency is generally responsible for making any modifications recommended by the FAA so that it conforms to applicable standards or statutory requirements. The FAA Airports office will notify the public agency of its acceptance of the planning document. Acceptance does not require that the FAA agree with the conclusions or recommendations in the plan, nor does FAA acceptance of a plan imply such agreement.
- 14.2.4.2 **Land Acquisition.** Public agency land acquisition certifications must be filed in the appropriate PFC file at the FAA Airports office. Revised property maps, if submitted, must be verified and filed in accordance with the FAA Airports office's policy.
- 14.2.4.3 **Equipment Acquisition or Acquisition.** Public agency equipment acquisition or rehabilitation certifications must be filed in the appropriate PFC file at the FAA Airports office.
- 14.2.4.4 **Construction and Environmental Mitigation.** Public agency construction certifications and environmental certifications must be filed in the appropriate PFC file at the FAA Airports office.

- 14.2.5 **FAA Actions Associated with Project Financial Completion.** After the public agency has notified the FAA Airports office of project financial completion, the FAA Airports office will review the submitted statement to verify that the PFC amount collected and spent on the project conforms to the approved amount. If the amounts vary, the FAA should instruct the public agency to reconcile the funding record through the appropriate amendment procedures.

Although the FAA no longer offers termination protection, in certain limited cases in the past, the FAA did provide PFC termination protection language for specific projects financed by PFC stand-alone bonds. In these limited cases, the FAA Airports office must receive the certification of physical completion before the termination protection language becomes effective. This ensures that the public receives the benefit of a usable unit of infrastructure in exchange for its continued payment of PFC's in the event of a violation of the PFC Regulation. In addition, the public agency must also certify that all bond proceeds have been expended on the projects subject to the protected financing. In this latter case, the certificate of expenditure of bond funds meets the requirement of the termination protection language but does not constitute financial completion of the project. Financial completion, as defined in this section, only occurs when the bond has been retired (*see* Appendix B).

14.2.6 Project Completion Certifications and Record Requirements. The FAA Airports office will notify APP-510, by entry into the FAA SOAR database, of physical and financial project completion. The notice of physical project completion must include the date of physical completion and verification that the public agency submitted appropriate certifications. The notice of financial completion must include information on the total cost of the project and the amount of PFCs approved and expended, broken out by capital and interest expenses (as necessary). These project completion certifications are generated by the FAA SOAR database for inclusion in the decision file. Because physical and financial completion is often accomplished on different dates, these notifications will generally be made separately.

Records of each project's physical and financial completion must be kept in the decision file until the decision is closed out.

Section 14.3 PFC Decision Closeout

14.3.1 General. The PFC decision closeout process refers to the final administrative and financial reviews necessary to ensure that the PFC collection, handling, and use for a specific PFC decision have been conducted in accordance with the provisions of the PFC statute and regulation. A PFC decision is complete once all the projects approved in the decision are completed (both physically and financially) and the approved PFC collection period has reached the charge expiration date. Close out will also occur when the FAA terminates a public agency's entire authority to impose and use a PFC. The FAA's role in PFC closeout includes the following elements:

- 14.3.1.1 Confirming that all projects approved in the decision, as amended, have been physically and financially completed
- 14.3.1.2 Confirming that all PFC revenue collected under the authority granted in the decision has been used on approved PFC projects.
- 14.3.1.3 Initiating actions to approve the use of any excess PFC revenue identified at closeout. If excess revenue cannot be used on approved projects, the FAA may be required to reduce AIP entitlement funds.

The FAA Airports office must review the public agency's quarterly reports and any other public agency notices to the FAA to obtain final costs for each project and associated decision. The FAA Airports office may request additional information from the public agency, as needed, to verify final cost amounts.

14.3.2 Duration of Authority Completion Requirements. For many PFC decision closeouts, the public agency must adjust the duration of its collection authority to collect the amount approved by the FAA for the project. Accordingly, it may be necessary for the public agency to request a change in the PFC decision duration using the procedures in 14 CFR § 158.49(c).

14.3.3 PFC Decision Closeout. PFC decision closeout occurs after all projects in the approved decision have been completed, physically and financially, and the authorized PFC

collection period for the decision has been completed. At the completion of all projects approved in a PFC decision, the FAA Airports office will generate a final report from the SOAR database for the appropriate PFC file. The FAA Airports office may request that the public agency submit project summary information to assist it in preparing the final report. The responsible official in the FAA Airports office will review the information and sign the application closeout form. The PFC decision closeout process is the final administrative and financial review necessary to ensure PFC collection, handling, and use for a specific decision have been conducted in accordance with the provisions of the PFC statute and regulation.

14.3.4 Decision Closeout Notification and Record Requirements. The FAA Airports office will notify APP-510, by entry into the SOAR database, of a decision closeout and the date of closeout. This notification will confirm that the project completion information recorded in FAA records and databases conforms to the summary project completion data recorded in the PFC Decision Closeout Report. Once the closeout report is completed, project-specific records may be archived. However, the decision report, along with the PFC decision and any amendments, must be retained by the FAA Airports in accordance with FAA Retention Schedule for the PFC Program (available at [FAA Retention Schedules](#)), along with any project-specific information that the FAA Airports office deems necessary for the case history of the projects.

14.3.5 Use of Excess PFC Revenue. In many cases, because of charge expiration dates occurring on the first of a month following the attainment of the authorized collection amount, the amount of PFC revenue remitted to the public agency, plus interest earned, will exceed the allowable costs of the projects.

Part 158.39 requires that a public agency must identify excess revenue within 30 days after the authority to impose a PFC has expired or has been terminated by the FAA. This date will typically not coincide with PFC decision closeout. The public agency is required, within this 30-day period, to submit a plan to the FAA Airports office indicating the intended use of the PFC revenue (*see* Paragraph 9.2.7). The plan must include a timetable for the submission of any necessary application to use the PFC revenue. In most cases, this requirement can be met through a follow-on decision that begins immediately after the decision is closed.

Loss of Federal Airport Grant Funds. In some cases, the FAA Airports office may determine that the public agency has unliquidated PFC revenue at PFC decision closeout and that the public agency has not submitted an acceptable excess revenue plan. In these cases, the FAA Airports office must advise APP-510 of the amount of excess PFC funding. APP-510 will advise APP-520 so that a reduction of a like amount of AIP passenger entitlement funds (*see* Paragraph 9.2.10). A reduction of AIP passenger entitlement funding described herein, will not constitute a withholding of a grant application or payment of funds under an approved grant, as provided by 49 U.S.C. 47106(e) and 47111(d).

Chapter 15. Termination

Section 15.1 Overview

- 15.1.1 **General.** The PFC Regulation (Subpart E) provides for termination of a public agency's authority to impose a PFC if that public agency is found to be in violation of the terms and conditions of the PFC statute and regulation. These include, but are not limited to, the following: 1) the public agency uses PFC revenues on unapproved projects; 2) the public agency fails to comply with the PFC assurances in the conduct of a project; or, 3) the public agency does not make sufficient progress toward the implementation of an approved project.

This chapter describes procedures for determining the extent of a violation, informally resolving a violation, and in the event that informal resolution is unsuccessful, formally resolving a violation through termination of impose authority. This chapter also explains provisions for a reduction in a public agency's AIP entitlement funds to ensure compliance with the PFC Regulation.⁵⁴

- 15.1.2 **Identification of Potential Violation.** The FAA Airports office may identify a potential violation as a result of: 1) an FAA Airports office's review of a public agency's quarterly reports, annual reports, or audits; 2) a complaint filed with and investigated by the FAA; or 3) an audit initiated by the FAA.

The public agency should be consulted and given an opportunity to explain any identified irregularity. If the FAA Airports office is not satisfied with the public agency's explanation of the irregularity or if the FAA Airports office believes that a potential violation exists, the FAA Airports office will inform APP-510, in writing, of the identified potential violation, the severity of the violation, and any proposed corrective actions, before it begins informal resolution procedures. In the event of a violation with national implications, as determined by the Associate Administrator, APP-510 may assume responsibility for resolving the violation at this point.

- 15.1.3 **Investigation of Complaints.** The FAA Airports office must investigate complaints from the aviation community that a public agency is not in compliance with the PFC assurances. The complainant must be notified in writing of the outcome of the investigation. Additional complaints alleging the same violation need not be investigated unless new information is presented. However, each complaint must be acknowledged in writing and each complainant must be provided with a summary of the FAA's finding.

Section 15.2 Informal Resolution

- 15.2.1 **Letter to the Public Agency.** Following consultation with APP-510, the FAA Airports office will prepare a letter of notification defining the extent of the violation, any corrective actions the public agency must take to avoid further proceedings, milestones

⁵⁴ The circumstances under which authority to impose a PFC may be terminated for violations of the ANCA (49 U.S.C. 47524 and 47526) are not addressed in this Order, but rather must be dealt with on a case-by-case basis in coordination with APP-510, APP-400, and ACO-100.

(including a final due date for completion of those corrective actions after which formal termination actions will be started), and the format to be used by the public agency to provide notice that the corrective actions have been taken. This letter must also include an invitation for a meeting between the public agency and the FAA to discuss the violation, proposed corrective actions, and the timetable for implementing those corrections.

The specified timetable and due dates should conform, to the extent possible, with the regulatory timeframes. This is particularly important in the case of project implementation deadlines (*see* Paragraph 4.3.17). The informal resolution process is not intended to function as a means of granting de facto extensions to regulatory deadlines. Therefore, informal resolution must be undertaken only as a one-time opportunity to resolve the violation; if the violation cannot be resolved, the public agency must voluntarily withdraw the projects or applications.

If the public agency does not complete any of these actions, the FAA must commence the formal termination process. In some cases, the FAA may permit a public agency to implement the project after the deadline, but only for good cause and if such implementation can be accomplished in less time than it would take to complete the informal and formal termination processes specified in this chapter. In making this calculation, the time allotted for the informal resolution process should not be excessive, typically no more than three months, and no more than six months for the formal termination proceedings (*see* Section 15.3). The letter of notification must be in the format provided in the PFC intranet document site and signed by the regional Airports Division Manager or designated official. A copy of the notice will be sent to APP-510.

15.2.2 Meeting Between FAA and Public Agency. A meeting to discuss the violation and the informal resolution of the violation, while not required by regulation, affords both the FAA and the public agency an opportunity to come to a mutually agreeable solution. The meeting is best conducted as a working session rather than as a public meeting or formal hearing.

15.2.2.1 Informal Resolution to a Violation. If the public agency takes corrective actions, the public agency must submit a letter that describes the completed corrective actions by the date specified in the FAA's letter of notification. The FAA Airports office will review the public agency's letter and confirm that all required actions have been completed.

15.2.2.2 If the review confirms that all required actions have been completed, the FAA Airports office will notify the public agency that the violation has been adequately resolved. The letter must be in the format provided in the PFC intranet document site and signed by the regional Airports Division Manager or designated official. A copy of the letter will be sent to APP-510.

15.2.2.3 Public Agency Does Not Take Adequate Corrective Actions. If the public agency does not adequately resolve the violation or if the public agency does not respond by the date specified in the FAA letter of violation, the FAA

Airports office must proceed to the formal termination procedures described in Section 15.3 of this chapter.

- 15.2.2.4 **Public Agency is Not Able to Resolve Non-Compliance Issues.** If it appears the public agency will not be able to meet the proposed schedule or resolve non-compliance with a reasonable effort, the FAA Airports office should ask the public agency to voluntarily withdraw the project. If the public agency will not withdraw the project, the FAA Airports office will then advise the public agency that it will proceed with the formal termination process. The FAA Airports office must make it clear to the public agency that it will not be given the opportunity for a second informal resolution.

Section 15.3 Formal Termination Proceedings

- 15.3.1 **General.** This section covers termination procedures outlined in 14 CFR § 158.85.

- 15.3.2 **FAA Determination That Informal Resolution Was Not Successful.** If the FAA Airports office determines that informal resolution has not been successful, the FAA Airports office will notify APP-510, by memorandum. APP-510 will have 15 days from its receipt of the memo to provide comments, at which point the termination process will continue.

- 15.3.3 **Federal Register Notice of Proposed Termination.** After receiving APP-510's comments, the FAA Airports office will prepare a *Federal Register* notice of proposed termination using the format and instructions provided in the PFC intranet document site. The notice will describe the violation, the scope of the proposed termination action, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. It will also identify any corrective actions the public agency can take to avoid further proceedings. After publication, the FAA Airports office will furnish a copy of the notice to the public agency. The due date for comments and corrective action will be no less than 60 days after the publication of the notice.

- 15.3.3.1 **Public Agency Takes Corrective Actions.** The FAA Airports office will review any public agency letter of completed correction actions submitted within the time frame specified in the *Federal Register* notice. If the public agency's actions comply with the requirements specified in the *Federal Register*, the FAA will issue a letter of completion in the format provided in the PFC intranet document site. The letter must be signed by the regional Airports Division Manager and a copy sent to APP-510.

- 15.3.3.2 **Public Agency Does Not Take Adequate Corrective Actions.** If the public agency does not adequately resolve the violation or if the public agency does not respond by the date specified in the *Federal Register* notice, the FAA Airports office will continue with the procedures specified in Paragraph 15.3.4.

15.3.4 **Public Hearing.** If the public agency is still in violation of the regulation after the steps specified in Paragraph 15.3.3, the FAA Airports office will coordinate with APP-510 in the preparation of the *Federal Register* notice of a public hearing.

15.3.4.1 ***Federal Register* Notice of a Public Hearing.** The FAA Airports office will prepare a *Federal Register* notice, in the format and following the instructions provided in the PFC intranet document site, announcing a public hearing to determine if violation of the regulation has in fact occurred. The notice must be published at least 30 days before the hearing. The FAA Airports office will provide a copy of the published notice to the public agency.

15.3.4.2 **Hearing.** The public hearing to determine if violation of the regulation has occurred will be held in a manner determined by the FAA to be appropriate to the circumstances and to the matters in dispute.

15.3.5 **Final Decision.**

15.3.5.1 ***Federal Register* Notice – Finding of No Violation.** If after completion of the hearing the FAA determines that there has been no violation, the FAA Airports office will prepare a *Federal Register* notice of final decision in the format and following the instructions provided in the PFC intranet document site. This notice, along with any supporting documents, will be forwarded to APP-510 for the Administrator's signature. The FAA Airports office will provide a copy of the published notice to the public agency.

15.3.5.2 ***Federal Register* Notice – Finding of Violation.** If after completion of the hearing the FAA concludes that a there has been a violation and the public agency has not taken acceptable corrective actions, the FAA Airports office will prepare a *Federal Register* notice of final decision in the format and following the instructions provided in the PFC intranet document site. Where appropriate, the FAA may prescribe corrective action, including any corrective action the public agency may yet take. This notice, along with any supporting documents, will be forwarded to APP-510 for the Administrator's signature. The FAA Office of Airports will provide a copy of the published notice to the public agency.

15.3.5.2.1 **Public agency written notice of action.** Within 10 days of the date of publication of the final decision, the public agency must advise the FAA in writing of its intention to complete any prescribed corrective actions. The actions must occur within 30 days of the published notice.

1. ***Public agency takes corrective actions.*** The FAA Airports office will review any public agency letter of completed corrective actions submitted within the timeframe specified in the *Federal Register* notice and, if applicable, issue a 'letter of completion' in the format provided in the PFC intranet document site. The letter must be signed by the regional Airports Division Manager and a copy sent to APP-510.

2. *Public agency does not take adequate corrective actions.* If the public agency does not adequately resolve the violation by responding in writing within 10 days of the publication of the *Federal Register* notice that it will complete the prescribed corrective actions, or does not take corrective actions within the time frame specified, the public agency's authority to impose a PFC will be terminated in accordance with the procedures identified in subparagraph 2 below.

15.3.5.2.2 Termination procedures.

1. If the public agency chooses not to take the corrective action prescribed in Paragraph 15.3.3.1, it must provide to the FAA, within 10 days of the date of publication of the notice of the Administrator's decision, a listing of the air carriers operating at the airport and all other issuing carriers that have remitted PFC revenue to the public agency in the preceding 12 months. If the public agency does not provide a list of affected carriers, the FAA Airports office will use the latest ACAIS report to determine a list of affected carriers.
2. The FAA Airports office will prepare a termination cover letter to the public agency and the affected carriers using the format provided in the PFC intranet document site. The letter will include a specific date (the first day of the month no later than 30 days after date of the letter) for the termination of collections. A copy of the letter, signed by the regional Airports Division Manager, and a copy of the *Federal Register* termination notice will be sent to the public agency, Airlines for America (A4A), and each carrier on the public agency's list. The carriers are responsible for terminating or modifying PFC collection by the date specified. In addition, a copy of the letter must be sent to APP-510.

Section 15.4 Impact on AIP

- 15.4.1 **Loss of Federal Grant Funds.** If the FAA determines, after completing the procedures in Section 15.2 or Section 15.3, that excess PFCs have been collected or PFC revenue is not being used as approved, the FAA may reduce the passenger entitlement funds not yet under grant but due the public agency under AIP. This action may be taken with or without a formal termination of PFC collection authority. The FAA Airports office will coordinate with APP-510 before taking action to reduce the public agency's passenger entitlement funds. If APP-510 concurs, the FAA Airports office will coordinate with APP-520 to implement the reduction in passenger entitlements.
- 15.4.2 **Amount of Reduction.** The amount of the reduction under Paragraph 15.4.1 must equal the excess collected, or the amount not used in accordance with the regulation.
- 15.4.3 **Impact on Existing Grants.** A reduction under Paragraph 15.4.1 does not constitute a withholding of approval of a grant application or the payment of funds under an approved

grant as defined in the PFC statute. The PFC statute and regulation do not require a public hearing before an AIP offset (*see* 14 CFR §158.87(c)).

Section 15.5 Termination Protection

15.5.1 Terminal Protection Language. The FAA provided limited protection from the termination of PFC collection authority for PFC-backed bonds in the past. Such limited protection was included in its decision documents. However, the relative stability and lack of termination actions by the FAA over the twenty-plus years of the PFC program has provided a strong platform for the use of PFCs in debt financing. Considering there is a wide acceptance of PFC financing, the FAA no longer provides termination protection language in its decision documents.

Chapter 16. Reporting, Recordkeeping, and Audits

Section 16.1 Overview

16.1.1 **General.** This chapter describes the requirements for the reporting, recordkeeping, and auditing of PFC accounts maintained by collecting carriers and public agencies.

Section 16.2 Public Agency Reporting Requirements

16.2.1 **Quarterly Report.** The FAA strongly encourages public agencies to use SOAR to enter its quarterly PFC collections and disbursements data. Public agencies that do so are not required to provide the air carriers or the FAA with a report in hard copy or electronic form. The SOAR database is the FAA's official database for all PFC actions, including collections/disbursement information entered directly by public agencies. Public agencies that choose not to enter their data in SOAR must provide quarterly reports to the air carriers collecting PFCs in a form that is mutually acceptable. The agreed-to form may be in hard copy or electronic copy. A copy of the report must be sent to the FAA Airports office. The quarterly report provides the air carriers and the FAA with sufficient information to monitor PFC revenue collections and disbursements.

16.2.1.1 In the quarterly report, the public agency must identify each project for each approved application. For each project, the report must indicate:

1. The current estimated or actual project implementation date
2. The current estimated or actual project physical and financial completion dates (month and year)⁵⁵
3. The PFC use approval date
4. The amount of PFC use approval
5. The amount of PFC revenue disbursements (not total disbursements from all revenue sources) for the project
6. The current PFC and total cost estimates. These estimates are helpful in providing an early notification to air carriers of any change in project financial needs

16.2.1.2 In addition, the quarterly report must include information for the quarter on:

1. The total PFC revenue received from the collecting carriers
2. The interest earned on the PFC's collected⁵⁶

⁵⁵ If quarterly data are entered in SOAR, the financial completion date should not be entered until the project is financially complete; i.e., all PFC disbursements have been made. Entering a financial completion date will remove the project from the disbursements screen.

3. The cumulative PFC revenue received
4. The interest earned on unexpended PFC balances
 - a. For accounting purposes, the public agency may choose to report expenditures of bond or line of credit proceeds as counting toward PFC-approved amounts. In this case, PFC quarterly expenditures will appear to greatly exceed PFC quarterly (and even cumulative) receipts. If this accounting approach is taken, the public agency must acknowledge its use of this method and use this same accounting method on all subsequent quarterly reports. The FAA strongly encourages public agencies that use debt financing on PFC projects to also report PFC quarterly revenue receipts and expenditures (e.g., PFC payments for debt service).
 - b. The quarterly PFC data must be entered in SOAR, or the report provided, on or before the last day of the calendar month following the end of the calendar quarter, or other quarterly period agreed to by the public agency and collecting carriers. (Note: regardless of the agreement with the carriers, the public agency must enter the data in SOAR, or submit its quarterly report to the FAA, by the last day of the calendar month following the end of the calendar quarter.) The public agency's quarterly report must be based on the PFC revenue they have actually received from the carriers during the quarter, not on the amounts stated in the air carriers' quarterly reports. The public agency should not wait until receiving quarterly reports from the carriers before issuing its own quarterly report.

16.2.2 Large and Medium Hub Airport Yearly PFC Revenue Estimates. Public agencies that impose a PFC at airports that enplane 0.25 percent or more of the total annual enplanements in the United States for the prior calendar year, as determined by the Administrator, must enter in SOAR, by July 1st of each year, an estimate of PFC revenue to be collected for each such airport in the upcoming Federal fiscal year. Alternatively, the public agency may submit the PFC revenue estimate to the FAA Airports office in hard copy or electronic form. In this case, the FAA Airports office must enter the estimated PFC revenue in SOAR. The public agency's estimate will be the basis for reducing AIP entitlement funds apportioned under the PFC statute in the upcoming fiscal year.

⁵⁶ Public agencies cannot report negative interest amounts in SOAR or in their quarterly reports, or use PFCs to recover losses. Section 158.67(a) requires that public agency keep any un-liquidated PFC revenue on deposit in an interest bearing account or in other interest bearing instruments used by the public agency's airport capital fund. The public agency must invest its un-liquidated PFC revenue wisely and only use PFC revenue to pay for the allowable costs of approved projects. The FAA will not approve the collection of additional PFC's to cover a public agency's bad investments. Therefore, the interest earned reported in SOAR or in the quarterly report must be either zero (if there is no un-liquidated PFC revenue in the account) or a positive amount.

16.2.3 Annual Collections Report. This information is used in various FAA reports to Congress, industry groups, and the public, as well as in internal FAA reports.

16.2.3.1 For large and medium hub airports that were subject to AIP reductions in the previous Federal fiscal year, the annual collections spreadsheet must also provide the actual PFC collections totals (not including interest earned) for that fiscal year (October 1 through September 30). These data on large and medium hub collections are compared to the AIP reductions that occurred to determine if adjustments need to be made in the reduction amounts in accordance with the PFC Regulation. This information must be entered directly into SOAR and verified by the public agency and the FAA Airports office.

Section 16.3 Air Carrier Reporting Requirements

16.3.1 Quarterly Report. Each carrier that collects PFCs are strongly encouraged to enter its quarterly PFC collections and remittance data into SOAR through the Airports External Portal (AEP) PFC module. Air carriers that do so need not provide the public agencies or the FAA with a report in hard copy or electronic form. Air carriers that choose not to enter their data in SOAR must file quarterly reports to the public agency in hard copy or electronic form, unless other arrangements are agreed to by the collecting carrier and the public agency. The carriers' quarterly reports provide an accounting of funds collected and remitted to each public agency.

16.3.1.1 Unless otherwise agreed to by the collecting carrier and the public agency, the reports must identify:

1. The collecting carrier and airport involved
2. The total PFC revenue collected
3. The total amount of PFC revenue refunded to passengers
4. The amount of collected revenue withheld by the collecting carrier for reimbursement of expenses, in accordance with §158.53(a) (*see* Section 8.4)
5. The dates and amounts of each remittance to the public agency
6. The data must be entered in SOAR, or the report filed with the public agency, on or before the last day of the calendar month following the end of the calendar quarter, or other period as agreed to by the collecting carrier and public agency, for which funds were collected.

16.3.2 Covered (in Bankruptcy) Air Carrier Reports. Each covered (in bankruptcy) air carrier must provide the FAA with a copy of its quarterly report by the date specified in Paragraph 16.2.1 above, unless it is entering its data in SOAR.

16.3.2.1 The covered air carrier must also provide the FAA with a monthly PFC account statement, delivered not later than the 5th day of the following month. This monthly statement must include:

1. The balance in the account on the first day of the month
2. The total funds deposited into the account during the month
3. The total funds dispersed from the account during the month
4. The closing balance in the account at the end of the month

Section 16.4 Recordkeeping and Auditing – Public Agency

16.4.1 **Account.** Each public agency must keep any unexpended PFC revenue on deposit in an interest bearing account or in other interest bearing instruments used by the public agency's airport capital fund. Interest earned on such PFC revenue must be used to pay the allowable costs of approved PFC-funded projects. PFC revenue may be commingled only with other public agency airport capital funds in deposits or interest bearing accounts. In certain instances, the public agency airport capital funds may be further commingled with other capital funds to simplify capital accounting or to earn higher interest rates. Such arrangements are not specifically prohibited under the PFC Regulation; however, the public agency must account for all PFC revenue, including interest earned, as specified in §158.67(a). In no event may PFC revenue be expended on unapproved projects or projects which have only been approved for impose-only authority. Moreover, PFC funds may not be used indirectly, such as in the form of an internal loan, to fund unapproved or impose only projects. This prohibition extends to public agencies 'grandfathered' under the AIP revenue assurance (FAA Order 5100.38, current edition) to use airport income for other agency projects. The 'grandfathering' provisions do not apply to PFC revenue.

16.4.2 **Accounting Record.** Each public agency must create and maintain a separate accounting record for each approved PFC application. The accounting record must identify the PFC revenue received from each collecting carrier, the interest earned on such revenue, the amount used on each project, and the amount reserved for currently approved projects.

16.4.3 **Audit.** Each public agency must provide for an audit of its PFC account every year during the period the PFCs are collected, held, or used. The audit must be performed by an accredited independent public accountant and may be of limited scope. Limited scope means that the public accountant must perform only those tests and procedures necessary to render the opinions required below. The accountant must express an opinion on the fairness and reasonableness of the public agency's procedures for receiving, holding, and using PFC revenue (also known as an examination of the public agency's system of 'internal controls'). The accountant must also express an opinion on whether the quarterly report (or SOAR data, if the public agency is reporting its quarterly data in SOAR) required under Section 16.2, fairly represents the transactions within the PFC account (also known as a 'report on PFC schedules').

16.4.3.1 The audit may be:

1. Performed specifically for the PFC account, or
2. Conducted in conjunction with an audit under the Single Audit Act Amendments of 1996 (Pub. L. 104-156), provided that the PFC program is specifically addressed by the auditor.
 - a. The auditor must, at a minimum, provide the opinions described above as well as a schedule of PFC transactions. Specific audit guidelines and a sample schedule for the PFC program are contained in the *Passenger Facility Charge Audit Guide for Public Agencies* (65 FR 62794), available on the FAA's public web site.

Upon request, a copy of the audit will be provided to each collecting carrier that remitted PFC revenue to the public agency in the period covered by the audit. In addition, a copy of the audit will be provided to the FAA Airports office in accordance with the 'Federal Oversight' provisions of 14 CFR §§158.71.

- 16.4.4 **Acceptable Level of Assurance.** The FAA has determined that the use of the procedures in the *Passenger Facility Charge Audit Guide for Public Agencies* will provide sufficient programmatic assurance that the public agency has met the requirements of 14 CFR 158, or is correcting items that were noted in its audit report. Therefore, the FAA will not normally require additional reports, undertake an audit of the public agency, or request DOT, Office of the Inspector General (DOT OIG) intervention on the FAA's behalf. Also, the FAA will not normally initiate further monitoring efforts unless a subsequent alleged gross violation of the regulation is substantiated.

However, the FAA will not have the same level of confidence that a public agency that has not used FAA's audit guidance is in compliance with the collection and remittance requirements of the PFC Regulation. Accordingly, alleged collection and remittance discrepancies raised against public agencies that have not used the FAA's guidance are more likely to trigger additional FAA monitoring activities, including requiring additional reports, the undertaking of an audit, or a request for DOT OIG intervention. Such an approach will not foreclose other FAA options for responding to and enforcing correct holding and use procedures.

- 16.4.5 **FAA Review of Public Agency Audits.** The PFC statute Paragraph 40117(h)(2) states that "The Secretary periodically shall audit and review the use by an eligible public agency of passenger facility revenue." FAA review of the annual PFC audits is the most cost-effective means to comply with this requirement. The FAA's Airport Compliance Division (ACO-100) does not review annual PFC audits because PFC revenues are not considered Federal funds. The PFC Regulation Paragraph 158.67(c)(3) gives the Administrator the authority to request a copy of the annual PFC audit from the public agency. Therefore, the FAA Airports office must request (via email or other means) that each public agency subject to the annual PFC audit requirement submit a copy of its audit to the FAA Airports office each year. If a public agency does not respond to a request for

their annual audit, the FAA Airports office may, at its discretion, send a follow-up request, or simply notify APP-510 (following regional procedures).

16.4.5.1 Once the public agency's annual PFC audit is received, the FAA Airports office must make the appropriate entries to record receipt of the audit in the SOAR database and then promptly review it to determine if the auditor has issued an unqualified opinion; i.e., has not reported any material weakness in PFC compliance. The FAA Airports office's review will consist of the following:

16.4.5.1.1 Review the 'Report on Compliance' (typically two pages in length) made by the auditor concerning the public agency's compliance with PFC requirements, the adequacy of its internal controls over compliance, and if its schedule of expenditures of PFCs is fairly stated. This two page summary report will either be in a stand-alone PFC document or will be identified as a separate PFC section in the Single Audit issued for the public agency. Similarly, the one or two page 'Schedule of Findings and Questioned Costs' in the audit document will summarize these findings.

16.4.5.1.2 With regard to compliance, a clean PFC audit on compliance will be indicated by a statement in the Report on Compliance to the effect of "In our opinion, [the public agency] complied, in all material respects, with the requirements referred to above that are applicable to its passenger facility charge program for the year ended [date]." With regard to internal controls, a clean ('unqualified') audit will be indicated by a statement to the effect that "We noted no matters involving the internal control over compliance and its operation that we consider to be material weaknesses." A clean audit of the schedule of expenditures will be indicated by a statement that it is 'fairly stated.' These results should be cross-checked with the Schedule of Findings and Questioned Costs.

16.4.5.1.3 If no material weaknesses are identified, no further work is required from the FAA Airports office. APP-510 will assume that there are no problems if the FAA Airports office does not send it a notice of problems.

16.4.5.1.4 If the auditor identifies a material weakness regarding the PFC program, the FAA Airports office may, at its discretion, investigate the audit further by using the checklist available on the FAA's intranet web site ([PFC Guidance Forms](#)) or simply send the problem audit to APP-510 (following regional procedures) with a notification that the audit is being forwarded for APP-510 review of weaknesses cited by the auditor. There is no requirement that the FAA Airports office further analyze the auditor's report before forwarding it to APP-510. However, the resolution of the FAA Office's review of the audit must be noted in the SOAR database. APP-510 will send back an e-mail to the FAA Airports office indicating that it received the problem audit and that it will assume responsibility for the audit. APP-510 will pursue all further

investigation of the audit and will advise the FAA Airports office of its resolution of any problems.

16.4.5.1.5 If the FAA Airports office chooses to investigate a PFC annual audit on its own, APP-510 must be informed (following regional procedures) about any weaknesses and the outcome of the investigation (notification by e-mail is adequate).

16.4.5.2 The FAA Airports office must keep a copy of each annual audit until the next audit is received from the public agency.

Section 16.5 Recordkeeping and Auditing – Air Carriers

16.5.1 **Account.** Carriers must create and maintain an accounting record of PFC revenue collected, remitted, refunded, and compensation retained under the PFC Regulation Paragraph 158.53(a) for each public agency for which they collect a PFC. The accounting record must identify each airport at which the passengers were enplaned.

16.5.2 **Audit.** Each collecting carrier that collects a PFC from more than 50,000 revenue passengers must provide for an audit, at least annually, of its PFC account.

16.5.2.1 The audit must be performed by an accredited independent public accountant and may be of limited scope. The accountant must express an opinion on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenue (also known as an examination of the air carrier's system of 'internal controls'). The opinion shall also address whether the quarterly reports required under 14 CFR §158.65 (or data entered in SOAR, if applicable) fairly represent the transactions in the PFC account (also known as a 'report on PFC schedules'). Transactions are defined as the account transactions required to represent the receiving, holding, and dispersing of PFC revenues by the air carrier.

16.5.2.1.1 The auditor must, at a minimum, provide the opinions described above in Paragraph 16.4.3. Specific audit guidelines for the PFC program are described in the *Passenger Facility Charge Audit Guide for Air Carriers*, available on the FAA's public web site ([Airports PFC Program](#)).

16.5.2.1.2 For the purposes of an audit under this section, collection is defined as the point when agents or other intermediaries remit PFC revenue to the carrier.

16.5.2.1.3 Upon request, a copy of the audit must be provided to each public agency for which a PFC is collected. The FAA may request copies of air carrier audits under the 'Federal Oversight' provisions contained in 14 CFR § 158.71 (*see* Section 16.6 above).

16.5.2.1.4 In those cases where the FAA deems that an audit may be necessary for those carriers collecting PFCs from less than 50,000 revenue passengers annually, the audit will be performed by the Administrator, the Secretary or the

Comptroller General, or designee, as provided in the PFC Regulation Paragraph 158.71.

- 16.5.3 **Acceptable Level of Assurance.** The FAA has determined that the use of the procedures in the *Passenger Facility Charge Audit Guide for Air Carriers* will provide sufficient programmatic assurance that the air carrier has met the requirements of PFC Regulation Paragraph 158.69, or is correcting items noted in its audit report. Therefore, the FAA would not normally require additional reports, undertake an audit of the air carrier, or request DOT OIG intervention on the FAA's behalf. Also, the FAA would not normally initiate further monitoring efforts unless a subsequent alleged gross violation of the regulation is substantiated.

However, the FAA will not have the same level of confidence that an air carrier that has not used its guidance is in compliance with the collection and remittance requirements of the PFC Regulation Paragraph 158.69. Accordingly, alleged collection and remittance discrepancies raised against air carriers that have not used the FAA's guidance are more likely to trigger additional FAA monitoring activities, including requiring additional reports, the undertaking of an audit, or a request for DOT OIG intervention. Such an approach will not foreclose other FAA options for responding to improper collection and remittance practices and enforcing correct collection and remittance procedures.

- 16.5.4 **FAA Review of Air Carrier Audits.** Periodically, APP-510 will request copies of air carrier annual audits to review them for completeness. Possible problems in air carrier annual audits identified by public agencies must be promptly reported to APP-510 by the Airports office as soon as notified by the public agency. APP-510 will then notify the Office of the Secretary of Transportation, Assistant General Counsel for Environmental, Civil Rights, and General Law (C-10).

Section 16.6 Federal Oversight

- 16.6.1 **Public Agency.** The FAA may periodically audit or review the use of PFC revenue by a public agency. The purpose of the audit or review is to ensure that the public agency is in compliance with the requirements of the regulation and 49 U.S.C. 40117. As noted in Section 16.4, the FAA will be less likely to undertake an audit of a public agency if the public agency follows the steps recommended in FAA's *Passenger Facility Charge Audit Guide for Public Agencies*.
- 16.6.2 **Carriers.** The FAA may periodically audit or review the collection and remittance of PFC revenue by the collecting carriers. The purpose of the audit or review is to ensure that the collecting carriers are in compliance with the requirements of the regulation and 49 U.S.C. 40117. As noted in Section 16.5, the FAA will be less likely to undertake an audit of an air carrier if the air carrier follows the steps recommended in FAA's *Passenger Facility Charge Audit Guide for Air Carriers*.

Access to Documentation. Public agencies and air carriers must allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller

General of the U.S., access to any of its books, documents, papers, and records pertinent to PFCs.

Appendix A. Relationship to AIP

Section A.1 Overview

A.1.1 **General.** The PFC program and AIP both support the funding of airport projects, but differ in a number of aspects:

1. Public agencies are authorized under the PFC Regulation to use PFC revenue as the matching local share of an AIP project (14 CFR § 158.13(g)).
2. PFC revenue can be used by a public agency to supplement an AIP project (14 CFR § 158.13(f)).
3. PFC revenue can be used to pay debt service and financing costs. AIP funds cannot be used for this purpose, except under the AIP Innovative Finance Demonstration Program (14 CFR § 158.13(d)).
4. Projects that are eligible for AIP funding are also eligible for PFC funding. Therefore, future changes to the AIP in regard to project eligibility will also apply to the PFC program (49 U.S.C. 40117(a)(3)). However, PFC eligibility also differs from AIP eligibility in that gates and related areas not eligible for AIP at larger airports are PFC-eligible under specific provisions of the PFC statute (49 U.S.C.40117(a)(3)(F)), as are noise projects eligible under 49 U.S.C. § 47504, even if a Part 150 program for those projects has not been approved (49 U.S.C.40117(a)(3)(E)).
5. PFC revenue cannot be used to pay administrative costs associated with AIP, including costs associated with planning efforts required under AIP, but not required under the PFC program, such as Disadvantaged Business Enterprise programs, benefit/cost analysis, Exhibit A property maps, and similar administrative efforts.
6. PFC projects must meet one or more of the objectives of 14 CFR §158.15(a) of the regulation. Specifically, PFC projects must: (1) preserve or enhance safety, security, or capacity of the national air transportation system; (2) reduce noise or mitigate noise impacts resulting from an airport; or (3) furnish opportunities for enhanced competition between or among air carriers.
7. If a public agency requests the imposition of a PFC at a level above \$3.00, the public agency must demonstrate that the costs proposed to be financed with PFC revenue cannot be paid for from AIP funds and that, if the proposed project is for surface transportation or terminal work, the public agency has made provisions for financing the airside needs at the airport. Public agencies with large and medium hub airports must also demonstrate that a project with a PFC level above \$3 makes a significant contribution to improving air safety, improving security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport (14 CFR §158.17). AIP does not include similar requirements.

8. Projects must be adequately justified (49 U.S.C. § 40117(d)). This requirement was added to the PFC statute after the original PFC Regulation was issued, although justification has always been required under §158.25(b)(7). The current version of the PFC Regulation explicitly states this requirement.
9. The authorization to collect PFCs provides that, if the FAA determines a public agency is collecting an excessive amount of PFC revenue or the revenue is not being used as approved, the FAA may reduce the amount of funds otherwise payable to the public agency under AIP by the amount of the excess collected or not used as approved (49 U.S.C. § 40117(g)(3)).
10. Section A.2 describes the possible reduction in AIP apportionments at large and medium hub airports that impose a PFC.
11. PFCs constitute a special form of local airport revenue, subject to restrictions imposed by the PFC statute and regulation. Accordingly, some Federal statutory and regulatory requirements that apply to projects funded by AIP do not apply to projects funded solely with PFCs. Projects funded totally with PFC revenue or with financing other than Federal funds are not subject to the labor minimum wage rates under the Davis-Bacon Act, Disadvantaged Business Enterprise requirements, Buy-American Preferences, or the Uniform Relocation Assistance and Real Property Acquisition Policy Act requirements. If PFC funds are used to supplement AIP funds to complete a project, all AIP requirements apply. In addition, the AIP requirements may apply if the PFC funded project is part of a past, current, or future FAA grant-funded program or project. Finally, in cases where a public agency may have distinct projects to accomplish a similar objective (particularly relocation assistance), one solely PFC-funded and one solely AIP-funded, both projects must follow the AIP requirements to preclude perceived inequities among those affected by the projects. Any questions on applicable Federal standards must be addressed on a case-by-case basis in consultation with APP-510.

Section A.2 Reduction in AIP Apportionments

- A.2.1 Apportionment Reduction for Collection Levels of \$3 or Below.** AIP funds apportioned under 49 U.S.C. 47114 to large and medium hub primary airports that impose a PFC of \$1, \$2, or \$3 will be reduced by an amount equal to 50 percent of the projected revenues from the PFC in the fiscal year. This amount cannot exceed 50 percent of the passenger entitlements otherwise due the airport (14 CFR § 158.95).

The reduced apportionment takes effect in the first fiscal year following the year in which the collection of the PFC begins.

- A.2.2 Apportionment Reduction for Collection Levels Above \$3.** AIR-21, Section 103, provides that, in the case of a medium or large hub airport collecting a PFC at a level above \$3, AIP apportionments must be reduced by an amount equal to the lesser of 75 percent of the projected revenues from the PFC in the fiscal year or 75 percent of the passenger entitlements otherwise due the airport. The reduced apportionment takes effect

in the first fiscal year following the year in which the collection of the higher PFC level begins.

- A.2.3 **Apportionment Reduction for Large and Medium Hub Airports in the State of Hawaii.** Section 143 of the FAA Modernization and Reform Act of 2012, Pub. L. 112-95, modified the regulation for the reduction of AIP apportionments for large and medium hub airports in the State of Hawaii if they impose PFCs. Reductions for these airports are based on the percentage of enplanements at the airport that are attributable to inter-island passengers.
- A.2.4 **Implementation of Apportionment Reduction.** Every year, the Office of Airport Planning and Programming (APP) gathers information about enplaned passengers throughout the system and computes the AIP apportionment for each primary airport for the following fiscal year. The apportionment for each large and medium hub airport imposing a PFC will be recomputed, beginning with the first fiscal year following the fiscal year in which collections of a PFC begin at that airport, and for each ensuing fiscal year that the public agency imposes a PFC. At the beginning of each such fiscal year, APP will notify each FAA Airports office of the amount of each apportionment reduction. The FAA Airports office will notify each public agency controlling an airport subject to reduction of the amount of the reduction. The FAA Airports office should remind any public agency that is considering requesting a PFC level above \$3 that the reduced AIP apportionment will be implemented at the beginning of the fiscal year following the charge effective date of the higher collection level, since this may influence the public agency's choice of the charge effective date (*see* Paragraph 2.3.1).
- A.2.5 **Adjustments to Apportionment Reduction.** If actual PFC revenues are less than or more than the public agency had estimated, the AIP reduction may be adjusted accordingly for the next fiscal year, without exceeding the limits noted above (49 U.S.C. § 40117(h)(3)).

Appendix B. Airport Debt Financing

- B.1 Overview.** This appendix provides an overview of the types of airport debt financings that have been used for PFC-funded projects.
- B.2 Debt Financing Associated with PFC Applications.** The definition of allowable costs in §158.3 includes payments for debt service on bonds and other indebtedness incurred to carry out PFC projects. Additionally, PFC applications must include information about the financing for each project as presented to the air carriers during the consultation process in accordance with §158.25(b)(13).

The FAA determines the amount and duration of the collection of PFCs and must make sure that the amount collected will not result in excess revenue. A basic understanding of financing terms and procedures is an essential component of this determination.

- B.3 Overview of Common Airport Financing Terms.** Airports use a variety of financing instruments to fund their capital projects, including projects that receive PFC funding. Airports financing vehicles vary in several meaningful ways, including maturity length (short-term vs. long-term debt) and rate mode (fixed-rate vs. floating or variable rate issues).

Airports develop and adopt legal documents (e.g., bond resolutions, indentures, ordinances, trust agreements, etc.) that establish the framework for their debt issuance and define the rights and security interests of bond holders. These documents describe key details associated with each financing, including (but not limited to):

1. The ‘Flow of Funds’ – the priority of the payments to be made from the portion of revenues pledged for the payment of debt service
2. Rate Covenant – the airport’s covenant to establish rates sufficient to generate annual net revenues relative to debt service and required debt service coverage, and
3. Additional Bonds Test – the minimum requirements needed to be met in order for an airport to issue additional bonds.

The most common form of debt used by hub airports is the *General Airport Revenue Bond* (‘GARB’). These bonds are supported solely by airport net revenues that are pledged to the bondholders. PFCs may be used to pay GARB debt service related to approved PFC projects.⁵⁷

Some airports issue *Stand-Alone PFC Bonds*, which are secured solely by a pledge of PFC revenues. Other airports have issued *Hybrid Bonds*, which are secured by (and expected to be paid from) PFC revenues, but also are supported by some pledge of general airport revenues (typically on a subordinate basis to the airport’s GARB debt).

⁵⁷ PFC funding of GARB debt service can take several forms. For example, PFCs may be included in the definition of “Revenue” at an airport. Alternatively, if PFCs are not pledged as “revenues” under an airport’s bond documents, PFCs may be used as an offset to debt service.

Other airports, typically non-hubs, use *General Obligation* (‘GO’) bonds that are backed by the credit of the issuer (e.g., the local municipality that owns the airport).

Within these primary types of debt financing, other forms of financing are available to airports, including various types of variable rate debt and direct placement loans.

Variable rate bonds carry market-based interest rates that vary periodically (e.g., interest rates may be reset daily, weekly, monthly, etc.) over the term of the bond. *Commercial Paper* (‘CP’), a form of variable rate debt, is a program that allows this issuance of Notes (i.e., a legal financing document) with a term from 1 to 270 days. Upon maturity, a Note is often refunded with the issuance of additional CP Notes, until the Notes are ultimately repaid or refunded with proceeds from a long-term bond issuance. CP is often used for interim funding of capital projects during their construction period. CP programs and other forms of variable rate debt (e.g., Variable Rate Demand Bonds) are almost always supported by a bank *Letter of Credit* (‘LOC’) that provides credit enhancement and liquidity support for the debt. *Direct placement loans* include various bank loans and financings that may be either a fixed floating rate.

In addition to interest expense, several other financing costs are associated with debt and debt issuance, which include:⁵⁸

1. Capitalized Interest – interest payments funded with bond proceeds during the construction period of a project
2. Cost of Issuance – fees for services necessary for the execution of the transaction, including underwriter fees and costs, rating agency fees, feasibility consultant fees municipal advisor fees, bond counsel fees, and others
3. Letter of Credit Fees – fees paid for the procurement and maintenance of a bank Letter of Credit, and
4. Reserve Fund Deposits – any amounts required to be deposited into specified reserve funds (such as a Debt Service Reserve Fund) for the security of bondholders.

Additionally, while less prevalent than in the past, bond insurance premiums and reserve fund sureties (used in lieu of a cash deposit) are also included for some debt issuances. Such fees and costs are typically a critical component of most debt financing transactions and are an additional cost of financing above debt service and capital costs.

B.4 The FAA’s Role in PFC-Backed Financing. In the initial development of the PFC statute and regulation, the FAA expected that PFC revenues would be used to support debt issued for airport construction projects. However, when PFC collections began, the financial community was concerned about the security of PFC funds because the FAA had the right, under certain conditions, to terminate PFC collections. Their concern was

⁵⁸ The financial community suggests that bond financing costs do not ordinarily exceed two percent of the debt package, but the FAA has not imposed a regulatory limit. If such costs prove to be excessive, the FAA may find that the costs are not reasonable and therefore not allowable.

focused on the lack of definition in the informal resolution phase of the termination process (§158.83). As a result, the FAA took a number of actions to address these concerns.

B.5 FAA-Initiated Actions to Improve the Ability of Public Agencies to Issue PFC Stand-Alone Debt.

The FAA developed two separate processes to address the financial community's concerns and included language in PFC decisions that provide more direction in informal resolution and, in some cases, provide a process that limits the FAA's ability to terminate PFC collections.

More recently, the FAA has discontinued its use of these processes in PFC decisions. Since the first PFC Order was published, the concerns of public agencies and the finance community have diminished as the FAA has established a record of working out concerns about possible PFC regulatory violations without the need to resort to the termination process. With this update, we have included discussions of both processes for reference (as a handful of decisions with termination protection are not time-limited except for the decision collection duration).

B.6 Protracted Informal Resolution. The FAA has taken steps to improve the ability of public agencies to issue investment grade PFC stand-alone bonds by using special terms in PFC Records of Decisions on a case-by-case basis. The FAA, in agreeing to implement these special terms, requires that the public agency appoint a bond trustee and identify interested parties to the financing. These special terms for protracted informal resolution consist of the following steps:

1. The FAA notifies the public agency and all other parties to the PFC-secured financing, by certified mail, of the suspected violation, and specifies corrective steps that could be taken to resolve the violation. The public agency has 90 days from the receipt of the letter to respond to the FAA and the affected parties. From this point forward, all parties to the financing will receive copies of all correspondence relating to the suspected violation.
2. Concurrent with the letter issued in Step 1, the FAA instructs the air carriers, by certified mail, to remit PFCs directly to the airport's bond trustee.
3. Also concurrent with the letter issued in Step 1, the FAA instructs the airport's bond trustee, by certified mail, to make debt service payments to PFC-secured bondholders using the revenues remitted by the air carriers. All other payments from PFC revenues are made by the trustee only at the direction of the FAA as the protracted informal resolution proceeds. In order to implement these terms, the trustee's agreement with the public agency must create third party beneficiary rights for the FAA.
4. If the public agency's response to the FAA does not satisfactorily address the FAA's concerns, the FAA provides one additional opportunity for corrective action. The FAA again notifies the public agency and all affected parties, as described above, that

the matter is still unresolved, describes the reasons that the response received was unsatisfactory, and again identifies corrective actions that may yet be taken to resolve the suspected violation. In addition, the public agency is informed that the FAA's next step, lacking a satisfactory response, is withholding AIP entitlement funding. The public agency is given 90 days to respond to this letter.

5. If the public agency's response to the FAA is again unsatisfactory, the FAA notifies the public agency and all parties to the financing, by certified mail, of the FAA's intent to withhold annual AIP entitlement grants in an amount equal to the amount of PFC revenues collected by the airport on an annual basis, pending resolution of the violation. AIP entitlement funds so withheld will be available for the public agency's use if the suspected PFC violation is resolved satisfactorily prior to formal PFC termination.

In total, these special terms provide a substantial amount of time (210 days or more) for the FAA, the public agency, and other parties to a PFC-secured financing to work together to cure a violation of the PFC Act before the formal PFC termination process begins. Only after the entire process outlined above is concluded and has failed to resolve a suspected violation would the FAA begin the termination of authority process described in section 158.85 of the regulation.

The addition of these special terms to the FAA's Final Agency Decision has facilitated the issuance of stand-alone, investment grade PFC-backed debt on a case by case basis. However, bond rating agencies and bond insurers generally request further structure to the FAA's termination actions when a public agency commits a suspected violation of the PFC Act. These are addressed in the next section.

- B.7 Termination Protection.** Despite the FAA's development of protracted informal resolution terms, the financial community in the 1990s remained concerned that the FAA could still rescind a public agency's PFC collection authority. In response, the FAA provided limited protection from the termination of PFC collection authority for PFC-backed bonds to be included in Records of Decisions, on a case-by-case basis.

However, the relative stability and lack of termination actions by the FAA over the twenty-plus years of the PFC program has provided a strong platform for the use of PFCs in debt financing. Additionally, the practice by airport management of developing reasonable PFC leveraging plans and rating analysts' and investors' comfort with the projections of future PFC revenues have all contributed to the market's acceptance and support for the issuance of PFC-supported bonds. Considering this market-wide acceptance of PFC financing, the FAA no longer provides termination protection language in its decision documents for sponsors that choose to leverage PFCs. However, a small number of PFC decisions have these provisions and are not yet closed, so the FAA has chosen to retain this discussion for historical purposes.

For those sponsors that already have termination protection language in their decision documents, the FAA agreed that, upon its receipt of a certificate from the public agency pursuant to the bond agreements certifying that the project (or useable unit thereof) is complete and that the proceeds from the bonds have been used in accordance with the

bond agreements and the regulation, and that all remaining proceeds, if any, have been transferred to the trustee account to be used to pay debt service, the FAA will not terminate the public agency's authority to impose a PFC until the earlier of: a) the fifth anniversary of the completion of formal termination proceedings pursuant to section 158.85; or b) the first date on which all debt service on the PFC-secured debt has been paid in full.

The FAA further agreed that if it issues a final notice to terminate or reduce the public agency's PFC authority, the FAA will prescribe corrective actions that the public agency could still take to avoid such termination. If, after such notice, the public agency completes the corrective actions prescribed in the notice or otherwise cures the alleged violation to the satisfaction of the FAA, the FAA will give notice to the public agency and the affected parties that the FAA will rescind the termination or reduction of the public agency's PFC authority.

Appendix C. Assurances

Section C.1 Overview

C.1.1 General. This chapter describes the assurances public agencies must make as a condition for approval of a PFC application. The public agency certifies its compliance with all the PFC assurances by signing the FAA Form 5500-1, which is submitted as part of the PFC application and is incorporated into the approval letter and ROD by direct reference. Each assurance is discussed separately after the summary list below.

When the PFC Regulation was established in 1991, participation in the PFC program was limited to public agencies. Since 1996, under the Pilot Program for Private Ownership of Airports (49 U.S.C. 47134), the sponsor of an airport participating in the privatization program is eligible to apply for PFC authority. In such cases, the sponsor, although not a public agency, must assert that it is a recognized participant in the privatization program and certify that it will comply with the PFC Regulation and assurances, including those pertaining to any preexisting PFC projects.

C.1.2 PFC Assurances Summary List. The public agency hereby assures and certifies, with respect to this project that:

1. **Responsibility and Authority of the Public Agency.** It has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the public agency's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application.
2. **Compliance with Regulation.** It will comply with all provisions of the PFC Regulation.
3. **Compliance with State and Local Laws and Regulations.** It has complied, or will comply, with all applicable State and local laws and regulations.
4. **Environmental, Airspace and Airport Layout Plan Requirements.** It will not use PFC revenue on a project until the FAA has notified the public agency that:
 - a. Any actions required under the National Environmental Policy Act of 1969 have been completed
 - b. The appropriate airspace finding has been made
 - c. The Airport Layout Plan with respect to the project has been approved
5. **Nonexclusivity of Contractual Agreements.** It will not enter into any exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public

agency from funding, developing, or assigning new capacity at the airport with PFC revenue.

6. **Carryover Provisions.** It will not enter into any lease or use agreement with any air carrier or foreign air carrier for a facility financed in whole or in part with revenue derived from a PFC if such agreement for such facility contains a carryover provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities.
7. **Competitive Access.** It agrees that any lease or use agreement between the public agency and any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a PFC will contain a provision that permits the public agency to terminate the lease or use agreement if:
 - a. The air carrier or foreign air carrier has an exclusive lease or use agreement for existing facilities at such airport, and
 - b. Any portion of its existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers.
8. **Rates, Fees and Charges.**
 - a. It will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee or charge pursuant to a contract with an air carrier or foreign air carrier.
 - b. It will not include in its rate base by means of depreciation, amortization, or any other method, that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier or foreign air carrier.
 - c. Notwithstanding the limitation provided in subparagraph (b), with respect to a project for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not financed by PFC revenue.
9. **Standards and Specifications.** It will carry out the project in accordance with FAA airport design, construction and equipment standards, and specifications contained in advisory circulars current on the date of project approval.
10. **Recordkeeping and Audit.** It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project. All records will satisfy the requirements of the PFC Regulation and will contain documentary evidence for all items of project costs.

11. **Reports.** It will submit reports in accordance with the requirements of the PFC Regulation, Subpart D, and as the Administrator may reasonably request.
12. **Airport Noise and Capacity Act of 1990.** It understands 49 U.S.C. 47524 and 47526, require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with that act or with the implementing regulations promulgated thereunder.

Section C.2 Discussion of Assurances

C.2.1 Responsibility and Authority of the Public Agency.

PFC Assurance 1 states that “[the Public Agency] has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the public agency’s governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application.”

This assurance satisfies the requirement of 49 U.S.C. 40117(b) regarding the authority for the imposition of PFC’s. The public agency certifies it has the legal authority to impose a PFC and to finance and carry out the proposed project. In certifying that it has this authority, the public agency establishes that it is the responsible party for compliance with the PFC Regulation and its assurances.

Failure of the public agency to make this assurance in its application would lead to a finding that the application is not substantially complete. The application could only be found complete and be approved if the legally authorized public agency agreed to comply with the regulation and its assurances. In some cases, uncertainty over the status of a public agency may preclude the FAA from reviewing a PFC application until the situation is resolved. This also may be the case when the airport changes hands with a new agency taking over control. If requested by the FAA Airports office, the public agency must produce evidence that appropriate resolution, motion, or similar action granting its authority to impose PFC’s has been enacted.

In a small number of cases, there may be uncertainty concerning the authority of the public agency over the airport either at the present or in the future. For instance, a different public agency may have taken over control of the airport. In such a case, clear agreement must be reached between the outgoing and incoming agencies as to the status and control of any existing PFC approvals. Additionally, the FAA may be aware of plans to abolish an airport authority at some point in the future, after which control of the airport will reside with another municipal, county, or state authority. In such cases, the FAA should confirm that an agreement exists whereby the potential replacement public agency agrees to complete the project(s) as described in the PFC application and will comply with the PFC Regulation and assurances in the event that the existing public agency is abolished. When a proposal to abolish an existing public agency is learned of

after the approval of a PFC application, the FAA must secure a written assurance, similar to Assurance 1 from the new public agency that it will complete the approved project(s) and will comply with the PFC Regulation and assurances governing the existing PFC approval.

C.2.2 Compliance with Regulation.

PFC Assurance 2 states that “[the Public Agency] will comply with all provisions of the PFC Regulation.”

This assurance satisfies the requirement of 49 U.S.C. 40117(i) regarding the terms and conditions imposed on the public agency by the PFC Regulation. The public agency certifies that it will comply with all provisions, including the assurances, of the PFC Regulation.

If the FAA Airports office becomes aware that the public agency will not or cannot comply with any provision of the PFC Regulation, it must pursue corrective actions as prescribed in Chapter 15 of this Order.

C.2.3 Compliance with State and Local Laws and Regulations.

PFC Assurance 3 states that “[the Public Agency] has complied, or will comply, with all applicable State and local laws and regulations.”

The State or local government is responsible for identifying violations by the public agency of State or local laws. The FAA must concern itself with this assurance in the event that an actual or potential violation of State or local law is identified which would jeopardize implementation of the project. Failure to comply with such State or local law will trigger the termination procedures described in Chapter 15 of this Order.

In some cases, a project may not be able to proceed unless the public agency is able to obtain State or local permits or approvals, such as with rights-of-way or building permits. There is no regulatory or policy requirement that the public agency obtain such approvals prior to the FAA’s approval of authority to use PFC revenues on a project that will require such permits. However, there must be a reasonable expectation that these permits can be obtained in time to implement the project and/or to enable completion of the project. Where such approvals are problematic, such as when a local government opposes a project, the FAA Airports office must evaluate the likelihood that the local government’s laws or regulations can be satisfied. Where it appears unlikely that permits will be granted, the FAA should discourage submission of the project for PFC funding, and in no case should the FAA approve more than impose authority for the project. Where local or State permits or approvals are uncertain, the FAA Airports office should recommend that the public agency not pursue the project at this time. However, approval of impose only authority is a viable option (provided other approval criteria are met). Use authority must not be granted until local and State permits and approvals are in hand. The FAA Airports office should specify a course of action that the public agency must pursue in the event that permits are not obtained in a timely manner. Such a course of action may entail the

withdrawal of a project and use of collected funds for alternative projects. Such recommendations must be coordinated with regional legal personnel and APP-510.

Finally, if the FAA determines that a State or local law is preempted by Federal law, including 49 U.S.C. 40117(b)(2), conformance with the State or local law in question is not required. In such cases, actions by the FAA Airports office must be coordinated with APP-510.

C.2.4 Environmental, Airspace and ALP Requirements.

PFC Assurance 4 states that “[the Public Agency] will not use PFC revenue on a project until the FAA has notified the public agency that:

1. Any actions required under the NEPA have been completed;
2. The appropriate airspace finding has been made; and
3. The ALP with respect to the project has been approved.”

This assurance satisfies the requirement of 49 U.S.C. 40117(i) regarding the terms and conditions imposed on the public agency by the PFC Regulation. The assurance also satisfies FAA obligations under NEPA and public agency and FAA obligations under Title 49. An application for use authority cannot be found substantially complete, and a project cannot be approved for use authority, unless these actions and findings are verified by the FAA Airports office. The FAD must include a determination for all projects approved for use that these items have been completed.

C.2.5 Non-Exclusivity of Contractual Agreements.

PFC Assurance 5: It will not enter into any exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public agency from funding, developing, or assigning new capacity at the airport with PFC revenue.”

This assurance satisfies the requirement of 49 U.S.C. 40117(f) regarding non-exclusivity of contractual agreements by the public agency for projects carried out under these provisions.

The public agency certifies that it will not enter into an exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Long-term is defined in the PFC Regulation as 5 years or longer. The term “exclusive” is not specifically defined but has been determined to describe the common industry practice of assigning absolute rights to the use of certain facilities by a particular carrier. Under exclusive use leases, the terms of the lease provide no right to the airport manager to reassign leased airport facilities (except in emergency or other limited and temporary situations) from one carrier to another, even if the facilities are not fully utilized.

Exclusive use contracts generally apply to terminal facilities, especially gates, ticket counters, and baggage claim areas. Airfield facilities, such as aprons, even if adjacent to exclusive use facilities, are typically not leased to specific carriers under exclusive use arrangements. Certain landholdings may also be leased and are subject to this assurance as well as Assurance 6.

In some terminal lease contracts, a carrier is offered preferential, but not exclusive, use of facility space. A preferential use leased facility may be reassigned by the airport manager to another carrier if it is not being fully utilized by the leasing carrier, subject to certain reasonable restrictions on the airport manager's actions. A long-term preferential lease of PFC-funded facility space to an air carrier is permitted under the PFC statute and regulation. However, the terms of a "preferential" lease must avoid offering *de facto* exclusive terms to air carriers. In particular, the FAA has found leases called "preferential" for PFC purposes to be *de facto* when such leases provide exclusive rights to an air carrier if the air carrier uses the facility above certain specified use thresholds. Such use thresholds may be set in terms of a minimum number of flights per gate per day, total operations per day, or a passenger use metric. The FAA has advised that numeric use thresholds, even if set at a level reflecting full use of a gate in the first year of a lease, are *de facto* exclusive use leases because they provide the airline lessee with legally enforceable rights to prevent reassignment, regardless of changes in circumstances that may occur over the life of the lease. Furthermore, these levels may not reflect full use of a gate in future years, especially as space at an airport becomes constrained and an air carrier and airport management find means to utilize gates more effectively. Rather, the FAA expects that airport management retain some control of the gates based on the physical environment of the airport and its air service requirements at any given time.

In the case of any proposed PFC project subject to a lease between the public agency and an air carrier, the FAA Airports office must review any actual or proposed lease documents to verify that there are no exclusive use provisions, either explicit or *de facto*, in the lease. Where exclusive use provisions are identified, the Airports office must verify that these terms are for less than 5 years, paying special attention to any explicit or implicit carryover provisions in the lease that would render the lease a *de facto* long term lease (see Paragraph 15.4.1). In the case of identified long-term exclusive use terms, the FAA Airports office must not approve the project for use of PFC funding until the public agency modifies the lease to remove such terms. If a lease has not yet been developed, the FAD should specifically require that the future lease be submitted to the FAA Airports office for review when the lease becomes available, preferably before it is executed.

Noncompliance with Assurance 5 may be revealed after a PFC-funded facility has been constructed. This may occur due to the issuance of a new lease or execution of an initial lease after the submission of a PFC application to use PFC revenues to build a facility. Similarly, a review of a lease by an FAA Airports office may have failed to reveal special provisions that render the lease a *de facto* exclusive use lease. This latter outcome may result from very complex lease arrangements or a lease that is modified by some other written contract not known to the reviewer. In such cases, the FAA Airports office must begin steps to ensure compliance with the assurance.

Finally, the prohibition on long-term exclusive use lease or use agreements applies to agreements between a public agency and an air carrier or foreign air carrier. It does not directly apply to agreements between a public agency and a non-air carrier, such as a fixed based operator or airport manager under contract to the public agency. In such cases, however, the prohibition on long-term exclusive use leases would apply to any lease or use agreement between the fixed based operator (or other entity) and any air carrier or foreign air carrier served by that entity with the PFC-funded facility.

C.2.6 Carryover Provisions.

PFC Assurance 6 states that “[the Public Agency] will not enter into any lease or use agreement with any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a PFC if such agreement for such facility contains a carryover provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities.”

This assurance principally protects against the use of an automatic rollover or carryover provision in a “short term” exclusive use lease that would make the lease a *de facto* long term exclusive use lease, which is not permitted by the statute or by Assurance 5 of the PFC Regulation. Carryover provisions would include any criterion or condition that would give the lessee the automatic right, or a marked advantage over another carrier, to renew a lease for the facility.

Although the primary intent of Assurance 6 is to protect against *de facto* long-term exclusive use leases, the assurance is worded more broadly to prohibit carryover provisions for any lease arrangement, including preferential leases. Accordingly, the public agency should be advised against the use of any carryover language for a leased PFC facility, regardless of any other terms in the lease, and be encouraged to remove such language when it is revealed through complaints or inspections. The FAA notes, however, that there is no statutory or regulatory limit to the term length of a single term non-exclusive lease.

C.2.7 Competitive Access.

PFC Assurance 7 states that “[the Public Agency] agrees that any lease or use agreements between the public agency and any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a PFC will contain a provision that permits the public agency to terminate the lease or use agreement if:

1. The air carrier or foreign air carrier has an exclusive lease or use agreement for existing facilities at such airport; and
2. Any portion of its existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers.”

This assurance was developed to prevent an air carrier from leasing PFC-funded facilities when it is not fully utilizing non-PFC-funded facilities available to it at the same location. As such, this assurance precludes an air carrier from tying up PFC facilities, which are intended to promote competition at an airport, while under-utilizing exclusive use facilities. In effect, this assurance gives the airport managers who use PFC revenues to fund facilities substantially greater control over the use of non-PFC facilities as well.

In the case of any proposed PFC project subject to a lease between the public agency and an air carrier, the FAA Airports office should review any actual or proposed lease documents to verify that the lease contains the appropriate provisions to allow the public agency to terminate a lease of a PFC-funded facility if the leasing air carrier does not fully utilize, or make reasonably available for use by others, its non-PFC, exclusive use lease facilities (APP-510 is available to assist in the review should the FAA Airports office request this assistance). Moreover, the FAA Airports office should verify that the public agency has a procedure in place to monitor gate use by the air carrier so that it may ensure that Assurance 7 is being met. Without such a procedure, the public agency must otherwise explain how it will ensure compliance with Assurance 7. This procedure is also discussed as part of the best practices in the FAA/OST Task Force's "Airport Business Practices and Their Impact on Airline Competition" (October 1999).

The FAA Airports office should be especially aggressive in monitoring compliance with Assurances 5 and 7 in the case of gate-constrained airports. Where a public agency has leased PFC-funded terminal gates under preferential terms to an air carrier that also controls non-PFC, exclusive use gates, the FAA Airports office should verify, by checking records of air carrier complaints, that other air carriers seeking access to the airport are accommodated in any available space at the preferentially leased PFC gates, subject to the terms of the lease contract. If carriers seeking access have not been accommodated and no available space exists, the FAA Airports office should verify that no space is available at the leasing carrier's non-PFC-funded, exclusive use gates. If space is available there, the public agency should be contacted and informed of the need to enforce the lease terms that pertain to Assurance 7, which could involve either the accommodation of the new entrant at gates controlled or leased by the air carrier, or in a case where accommodation cannot be reached, cancellation of the lease for the PFC-funded gates.

C.2.8 Rates, Fees and Charges.

PFC Assurance 8 states that:

1. [The Public Agency] will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier or foreign air carrier.
2. [The Public Agency] will not include in its rate base by means of depreciation, amortization, or any other method, that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier or foreign air carrier.

3. Notwithstanding the limitation provided in Assurance 8.2, with respect to a project for terminal development, gates, and related areas, or a facility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not financed by PFC revenue.

This assurance satisfies the requirement of 49 U.S.C. 40117(g) regarding air carrier fees and charges for PFC-financed facilities developed under these provisions.

This group of three requirements pertaining to Assurance 8 are among the most difficult provisions of the PFC program to administer and monitor for compliance. Assurance 8(a) specifically states that PFC revenues cannot be included in the calculation of net airport revenues for the purpose of calculating charges, rates, or fees to air carriers or foreign air carriers. For instance, in the case of a residual use or lease arrangement between a public agency and an air carrier, PFC receipts could not be included in airport revenues for the purpose of determining the residual cost that must be paid by the air carrier in the form of charges and fees. This assurance protects public agencies from the automatic offset of PFC receipts by lower airport rates and charges, thus negating much of the benefit of the PFC program to such airports as a source of added revenue.

The *Passenger Facility Charge Airport Audit Guide* requires that, in the course of the public agency's annual PFC audit (see Paragraph 16.4.3), the independent auditor review rates and charges calculations as they pertain to all three components of Assurance 8. Should the auditor identify a potential problem with regard to Assurance 8, the FAA Airports office should initiate an investigation in accordance with the procedures described in Chapter 15. Similarly, the FAA Airports office should investigate if an air carrier or other party should notify the FAA Airports office of a potential violation of Assurance 8. Finally, the FAA Airports office should generally be familiar with the rates and charges policy of the public agency, and should, when an opportunity arises, verify that PFC revenues are specifically excluded from rates and charges calculations. However, the public agency will generally have no incentive to violate this assurance.

Assurance 8(b) is intended to prevent public agencies from charging twice for the same infrastructure. Specifically, 49 U.S.C. 40117(g)(2) reads that "an eligible agency may not include in its price base the part of the capital costs of a project paid for by using passenger facility revenue to establish a price under a contract between the agency and an air carrier or foreign air carrier." Were a PFC collected from an air carrier passenger to finance an item of infrastructure, and the same item were included in the airport's rate base and indirectly charged to the passenger through higher ticket costs, the passenger would be charged twice for the same benefit.

Compliance with Assurance 8(b) may be difficult to monitor. However, air carriers are generally aware of the prohibition against inclusion of PFC-funded items in the airport's rate base, and would complain to the FAA if a public agency persisted in attempting to rate base the item in question.

One area of particular difficulty pertaining to compliance with Assurance 8(b) is PFC reimbursements of local matching shares to already completed AIP infrastructure projects or projects wholly funded with local funds. Due to Assurance 8(b), PFC reimbursement is only practical for local matches provided from funds not received from air carrier rates and charges, such as concession revenues or fuel flowage fees. Reimbursement of funds derived from air carrier rates and charges may occur, but would entail the direct reimbursement of air carriers for the amounts originally remitted for the reimbursed project (including interest). This reimbursement could take the form of a near-term reduction in rates and charges for the air carriers using the airport.

Another area of difficulty in monitoring compliance with Assurance 8(b) is Assurance 8(c), which substantially modifies Assurance 8(b) in terms of appropriate rates and charges for terminal facilities. Assurance 8(c) was intended to prevent the use of PFC funds to construct a terminal facility that would be leased exclusively or preferentially to an air carrier at a greatly reduced rate (due to Assurance 8(b)) from comparable facilities used by other carriers. This could provide the carrier leasing the PFC facility with an unfair competitive advantage over other carriers. Thus, the carrier using the PFC-built facility would be required by Assurance 8(c) to pay a rent equivalent to the one paid for a comparable non-PFC facility, even if this is inconsistent with Assurance 8(b). This inconsistency was acknowledged in the regulation by the use of the term “Notwithstanding the limitation provided in subparagraph (b)...”

Actual application of 8(c) has been problematic for several reasons. One area of difficulty is how to equate rates for comparable facilities. The FAA has advised public agencies in these circumstances to calculate the rate as they would a rate for a non-PFC financed facility of identical characteristics at the same airport. In other words, any rate differential between two terminal facilities at an airport should not be attributable to use of PFC funds at one and not the other. The FAA recognizes legitimate non-PFC reasons may exist for two non-PFC funded facilities to command different rents, such as age of the facilities or amenities available (e.g., concourses with jet bridges versus those without jet bridges).

The application of 8(c) can be accomplished in two ways. The public agency may consider “equalizing” its rental rates between the PFC financed and similar non-PFC financed facilities or it can establish the rate for the PFC financed facility at the higher non-PFC rate and generate “surplus” revenue. Use of the “equalization” option is made difficult by existing leases and agreements that might restrict the public agency’s ability to change lease rates in a timely manner.

On the other hand, there is difficulty in monitoring compliance with Assurance 8(c) for the “surplus” revenue approach. The public agency needs to be careful in accounting for revenue generated when a rate for a PFC-funded terminal facility is raised above the facility’s actual non-PFC costs due to the need to equalize user rates under Assurance 8(c). There is no specific provision in the PFC statute or regulation for how such revenues are to be used. However, the FAA has generally recommended that a public agency use the surplus revenues to fund PFC-eligible airport infrastructure that would otherwise be funded from the general rate base of the airport. In this way, all air passengers share in the benefit of the PFC based

revenues. Public agencies are especially encouraged to get the consensus of the air carriers serving the airport in the use of the surplus revenue.

Even though use of this “surplus” revenue is not subject to explicit statutory or regulatory requirements, the FAA Airports office should strongly discourage the use of surplus revenues for development which is ineligible under the PFC program or development that would disproportionately benefit one carrier over another. Such actions by a public agency would indirectly violate the intent of PFC statute and regulation. In such an instance, the FAA Airports office should coordinate with APP510.

C.2.9 Standards and Specifications.

PFC Assurance 9 states that “[the Public Agency] will carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications contained in advisory circulars current on the date of project approval.”

Building of airport infrastructure in conformance with FAA standards and specifications is important to the development of a safe and efficient airport system. A list of current Advisory Circulars that contain these standards is attached to the PFC application approval letter sent to the public agency.

In general, the FAA Airports office will rely on the public agency to certify its compliance with Assurance 9. However, while on site visits, the FAA Airports office may, at its option, avail itself of opportunities to review compliance on selected projects.

C.2.10 Recordkeeping and Audit.

PFC Assurance 10 states that “[the Public Agency] will maintain an accounting record for audit purposes for a period of 3 years after completion of the project. All records will satisfy the requirements of the PFC Regulation and will contain documentary evidence for all items of project costs.”

This assurance satisfies the requirement of 49 U.S.C. 40117(h) regarding recordkeeping and audit requirements. The public agency certifies that it will maintain accounting records for auditing purposes for a period of no fewer than 3 years after the completion of the project. More detailed instructions on recordkeeping requirements are provided in Chapter 16. While on site visits, the FAA Airports office may, at its option, review records on PFC projects kept by the public agency. In addition, to facilitate closeout of PFC projects and applications, the FAA may ask to review PFC project records kept by the public agency.

C.2.11 Reports.

PFC Assurance 11 states that “[the Public Agency] will submit reports in accordance with the requirements of the PFC Regulation, Subpart D, and as the Administrator may reasonably request.”

The public agency is charged with filing all reports required of it by Subpart D of the PFC Regulation, as well as exercising due diligence in obtaining required reports to it from air carriers (*see* Chapter 16). If a public agency is found to not meet reporting requirements, either as revealed by FAA oversight or by complaints from air carriers or other parties, it may trigger a broader review of the public agency’s recordkeeping and administration of the other PFC assurances.

C.2.12 Compliance with 49 U.S.C. 47523 Through 47528.

PFC Assurance 12 states that “[the Public Agency] understands 49 U.S.C. 47524 and 47526 require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with that act or with the implementing regulations promulgated thereunder.”

Compliance with Assurance 12 is fundamental to the public agency’s authority to impose a PFC. Once a violation of the ANCA is established by the Administrator, formal termination of the PFC authority should proceed as quickly as permitted by the regulation implementing ANCA, 14 CFR Part 161. It should be noted that the process outlined nor the protection afforded under the termination protection and/or protracted informal resolution language are not applicable to a violation of the ANCA.

Appendix D. Considerations in the Review of Air Carrier Lease and Use Agreements for PFC-Funded Facilities

Increasingly, airports are moving away from long-term, exclusive-use lease and use agreements, for a number of reasons, including airline consolidation, changes in airline service patterns, and changes in the type of airline service provided (legacy versus ultra-low cost). At the same time, competitive pressures in the industry have focused airline attention on their hub airports. In this circumstance, the airlines have typically invested large sums of money on their own facilities creating a need to protect such investments with longer terms and more restrictive lease conditions.

These two trends have imposed a new dynamic on the nation's airports. In addition, Federal requirements relating to Passenger Facility Charges (PFC) and airport competition plans have also played a role in shaping this dynamic. In particular, compliance with both the statutory and regulatory provisions related to competition plans and the use of PFCs for facilities that are subject to long-term or exclusive-use agreements have also shaped these roles.

In some instances, airports and air carriers have established agreements that appear to be preferential-use or common-use but due to underlying facts, these agreements have the net effect of continuing to function like exclusive-use agreements.

As a result, the FAA (in conjunction with the Department of Transportation, Office of the Secretary) has become increasingly involved in analyzing detailed issues with air carrier lease and use agreements, as well as the use of PFC funding for leased infrastructure. Specifically, FAA has needed to assess lease and use agreements in relationship to PFC Assurance 5 – Nonexclusivity of Contractual Agreements in order to determine whether specific improvements can be funded with PFC revenue.

These improvements are typically associated with PFC-funded terminal buildings but are now also being seen for aprons (including remain overnight (RON) and general use parking positions).

Regions and ADOs should consult with APP-510 (who will in turn coordinate with ACO, and AGC and OST Counsel) before rendering any opinion regarding compliance with statutory, regulatory and assurance requirements.

Assurance 5 states “It (the public agency) will not enter into an exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public agency from funding, developing, or assigning new capacity at the airport with PFC revenue.” (49 U.S.C. 40117(f)) This assurance must also be considered in relationship to PFC Assurances 6 and 7.^{59, 60}

The principles involved when examining a lease in consideration of Assurance 5 are relatively simple. In practice, leases for gates and other leased facilities fall into three general categories:

⁵⁹ 14 CFR Part 158, Appendix A, Assurances. Assurance 6 – Carryover Provisions

⁶⁰ 14 CFR Part 158, Appendix A, Assurances. Assurance 7 – Competitive Access

exclusive use, preferential use, and common use. Also, lease and use agreements are assigned a duration. Durations of five years or longer are considered long-term.

Preferential lease and use agreements are more difficult to assess. These agreements typically allow a designated carrier to use facilities on a regular, scheduled basis for its operations provided the carrier meets specific requirements and conditions (usually some minimum defined level of usage such as number of flights—called “turns” on a gate or a passenger use level). These requirements and conditions are critical for FAA’s assessment of the agreement. In some cases, these requirements and conditions can effectively render such agreements as “de-facto exclusive” use and jeopardize PFC funding for the facility. In addition, FAA must also assess the role of the public agency in overseeing the requirements and conditions of the agreement, and when needed, the reassignment of the use of the facility to ensure that the requirements of Assurance 5 are upheld.

Common use gates are not ordinarily assigned to a specific carrier but are available to be used by any carrier on a per-turn basis.⁶¹

The FAA will generally examine the following considerations (without limitation) in evaluating preferential use or common-use agreements:

Public Agency Gate Access Policy

1. Number of preferential-use and common-use gates available at the airport.
2. Written policy/process for accommodating new entrant and expanded service (relating to gates).
3. Gate recapture provisions for the public agency operating the airport.
4. Minimum “use-it-or-lose-it” gate utilization provisions (with the general goal of ensuring that a lessee cannot prevent gate recapture unless they use the facility for a reasonable minimum percent of the time).
5. Maximum gate utilization threshold designed to give other carriers an opportunity at accommodation before the lessee is allowed full utilization of the facility.⁶²
6. Gate sharing provisions.
7. Public agency’s role in managing gates and gate accommodations.⁶³

⁶¹ Per-turn basis means that the airport manages the scheduling of the gate and charges fees for each use of the gate. The airport does not generally receive remuneration for the times the gate is not used.

⁶² There are no fixed parameters for minimum or maximum utilization thresholds. Reasonable levels will vary from one airport to another, depending on the type and complexity of operations, diversity of the fleet mix, distribution between international and domestic operations, and several other factors. In general, however, acceptable ranges for minimum utilization vary from 4 to 6 turns per day, and acceptable ranges for maximum utilization would generally preserve flexibility for 1 to 2 scheduled domestic turns per day (or at least one scheduled international turn per day) by carriers other than the lessee.

Specific Leasing Requirements and Conditions

1. Subleases or handling arrangements with incumbent carriers (i.e., whether these are a requirement for access or accommodation, and whether there are protections in place against onerous fees and charges, etc.)
2. Airport assistance with subleasing arrangements.
3. Airport oversight of subleasing fees and communication with carriers of available gates for sublease.
4. Specific conditions in leases that affect use of the gate and how such a gate is available to other carriers (including carriers that are not affiliates, code-share or alliance partners).

Gate Assignment Conditions

1. Number of turns, numbers of passengers, aircraft gauge, frequency, or other measures used to assign gates to carriers using the airport.
2. Notification of available gates to all air carriers, including carriers that may not currently be serving the airport.

Gate Use Conditions

1. Details of criteria establishing the preferential use including when a gate is considered to be fully utilized by an incumbent carrier.
2. Number of turns, numbers of passengers, aircraft gauge, frequency, or other measures used to establish or protect preferential use levels— i.e., at what levels of utilization does the gate effectively function as if it were under an exclusive-use lease.
3. Accommodation provisions (i.e., clear access provisions and priorities that enable the public agency to accommodate a new entrant or expanded service when necessary, even when an incumbent carrier is meeting prescribed usage levels).
4. Active involvement by the public agency in policies and procedures to accommodate new carriers on preferential or common-use gates.
5. Formal and informal dispute resolution policies and processes, administered by the public agency (rather than relying upon one or more airline parties, a consortium of airlines or a third-party representative).

True common-use gates can be easier to assess because, in most cases, the public agency controls the use and assignment of such gates, and carriers pay fees based on actual utilization rather than lease payments. However, there has been a recent increase in common use gates with use

⁶³ For example, the public agency may request signatory carriers to provide monthly gate utilization reports, to help the airport manage gate access/resources.

requirements and conditions that resemble preferential use, and new terminology such as “common-use assigned gates.” These types of conditions can encumber common use gates to a greater extent than preferential leases by placing restrictions on the use of the gate that favors a certain air carrier.

FAA reviewers need to pay particular attention to the requirements and conditions in the lease before determining that the lease meets Assurance 5 requirements and the underlying statutory and regulatory provisions. The considerations noted above may also be used to assess common use gates and other facilities that contain usage requirements and conditions.